

# JUDICIAL COUNCIL MEETING

## AGENDA

**September 28, 2021**

**Meeting held through Webex**

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

1. 12:00 p.m. Welcome & Approval of Minutes..... Chief Justice Matthew B. Durrant  
(Tab 1 - Action)
2. 12:05 p.m. Chair's Report. .... Chief Justice Matthew B. Durrant  
(Information)
3. 12:10 p.m. State Court Administrator's Report.....Ron Gordon  
(Information)
4. 12:20 p.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)
5. 12:45 p.m. Education Committee Report & Reauthorization ..... Judge Diana Hagen  
(Tab 3 - Action) Lauren Andersen
6. 12:55 p.m. Board of Appellate Court Judges Report .....  
(Information) Judge Michele Christiansen Forster  
Nick Stiles
7. 1:05 p.m. Judicial Retention Certifications.....Nick Stiles  
(Action)
8. 1:15 p.m. Forms Committee Form..... Nathanael Player  
(Action)
9. 1:20 p.m. Mental Health Initiative - Next Steps ..... Judge Kara Pettit  
(Discussion) Ron Gordon
10. 1:35 p.m. Rules 1-205, 3-415, 3-419, 4-206, 4-401.02, and 7-302 for Final Action  
..... Keisa Williams  
(Tab 4 - Action)

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|-----|-----------|--|---|
|     | 1:45 p.m. | Break  |   |
| 11. | 1:55 p.m. | Budget and Grants.....<br>(Tab 5 - Action)                                       | Judge Mark May<br>Karl Sweeney<br>Jordan Murray |
| 12. | 2:25 p.m. | Legislative Audit Fines & Surcharge Implementation .....<br>(Action)             | Wayne Kidd<br>Michael Drechsel<br>Paul Barron   |
| 13. | 2:35 p.m. | Board of District Court Judges Report.....<br>(Information)                      | Judge Barry Lawrence<br>Shane Bahr              |
| 14. | 2:45 p.m. | Recognition of Outgoing Judicial Council Member - Rob Rice.....<br>(Information) | Chief Justice Matthew B. Durrant                |
| 15. | 2:50 p.m. | Old Business/New Business .....<br>(Discussion)                                  | All   |
| 16. | 3:10 p.m. | Executive Session - There will be an executive session                           |   |
| 17. | 3:40 p.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.

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|--|--|
| 1. Committee Appointments<br>(Tab 6)   | ADR Committee – Nini Rich<br>Technology Committee – Heidi Anderson<br>MUJI – Criminal Committee – Michael Drechsel |
| 2. Probation Policy 4.5<br>(Tab 7)   | Neira Siaperas   |
| 3. CJA Rules 2-101, 3-117, 3-303, 3-401, 3-411, 4-202.02, 4-208, 5-101, 6-101,<br>7-101, and 9-101 for Public Comment<br>(Tab 8) | Keisa Williams   |

# Tab 1

## JUDICIAL COUNCIL MEETING

**Minutes**  
**August 20, 2021**

**Meeting conducted through Webex**

**1:00 p.m. – 3:33 p.m.**

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

**Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Samuel Chiara  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Paul Farr  
Hon. Michelle Heward  
Justice Deno Himonas  
Hon. Mark May  
Hon. David Mortensen  
Hon. Derek Pullan  
Rob Rice, esq.  
Hon. Brook Sessions

**Excused:**

Hon. Todd Shaughnessy, Vice Chair  
Hon. Brian Cannell  
Hon. Ryan Evershed  
Hon. Kara Pettit

**Guests:**

Hon. Jennifer Brown, Fourth District Court  
Suzanne Brown-McBride, Impossible6  
Hon. Jon Carpenter, Price Justice Court  
Hon. Barbara Finlinson, Nephi Justice Court  
Hon. Dennis Fuchs, Senior Judge  
Hon. Eric Jewell, Payson Justice Court

**AOC Staff:**

Ron Gordon  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Paul Barron  
Alisha Johnson  
Tania Mashburn  
Jordan Murray  
Jim Peters  
Nathanael Player  
Jon Puente  
Nini Rich  
Neira Siaperas  
Nick Stiles  
Karl Sweeney  
Shonna Thomas  
Jeni Wood  
Kim Zimmerman

**Guests Cont.:**

Ben Marsden, BYU  
Kim Paulding, Utah Bar Foundation  
Heather Robison, University of Utah  
Mark Urry, TCE, Fourth District Court

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. The Council held their meeting through Webex.



**Motion:** Justice Himonas moved to approve the July 17, 2021 and July 30, 2021 Judicial Council meeting minutes, as amended to correct the July 30<sup>th</sup> minutes section Justice Himonas said that the fiscally prudent thing would be for the Council to retain control over the budget and award a lump sum and let the Supreme Court decide how it is allocated. Judge David Connors seconded the motion, and it passed unanimously.

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

Chief Justice Durrant had nothing new to report.

**3. STATE COURT ADMINISTRATOR'S REPORT: (Ron Gordon)**

Ron Gordon introduced Tania Mashburn as the new Public Information Officer. Ms. Mashburn received numerous awards for investigative journalism.

**4. COMMITTEE REPORTS:**

**Management Committee Report:**

The work of this committee is reflected in the minutes.

**Budget & Fiscal Management Committee Report:**

The committee met earlier this month to address annual budget requests.

**Liaison Committee Report:**

Judge Kara Pettit was unable to attend.

**Policy and Planning Committee Report:**

Judge Derek Pullan reported that the grant guardrail rule will be addressed by the committee in September.

**Bar Commission Report:**

Rob Rice briefly mentioned the Bar's Summer Convention went well with 319 attorneys who attended in person and 78 who attended remotely.

**5. ODR UPDATE: (Justice Deno Himonas, Heidi Anderson, Brody Arishita, Meredith Mannebach, Nini Rich, and Kim Zimmerman)**

Chief Justice Durrant welcomed Justice Deno Himonas, Heidi Anderson, Nini Rich, and Kim Zimmerman. The ODR program will be piloted in Louisiana. The rollout throughout the state is going well. In September there will be 24 justice courts running the program. Ms. Anderson explained the program is linked to MyCase. There are 14 ODR volunteer facilitators, eventually the courts will need an estimated 34 facilitators.

**Motion:** Justice Himonas moved to have Judge McCullagh replace him on the committee. Judge Augustus Chin seconded the motion, and it passed unanimously.

Chief Justice Durrant thanked Justice Himonas, Ms. Anderson, Ms. Rich, and Ms. Zimmerman as well as the IT team.

## 6. **PROBLEM-SOLVING COURTS RECERTIFICATIONS: (Judge Dennis Fuchs)**

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs reviewed the following problem-solving courts ready for recertification.

### **Courts that meet all Required and Best Practices criteria**

ADC1Washington	Adult Drug Court	Washington County	Judge Walton
ADC1Iron	Adult Drug Court	Iron County	Judge McIff Allen
ADC1Davis	Adult Drug Court	Davis County	Judge Edwards
ADC2Davis	Adult DUI Court	Davis County	Judge Edwards
AMHC1Washington	Adult Mental Health	Washington County	Judge Westfall
AMHC1Iron	Adult Mental Health	Iron County	Judge Bell
AMHC1Davis	Adult Mental Health	Davis County	Judge Williams
AMHC1Cache	Adult Mental Health	Cache County	Judge Fannesbeck

Judge Fuchs noted there are two courts that do not meet all Required and Best Practices criteria.

- Judge Brady's Adult Mental Health Court in Provo (AMHC1Utah) does not meet presumed #11: Drug tests available within 48 hours criteria. The court meets the criteria when possible.
- Judge Gilmore's Adult Mental Health Court in West Valley Justice Court (AMHC3SaltLake) does meet the following criteria:
  - Required # 3: High Risk Participants (Class B misdemeanor)
  - Required # 10: Medically Assisted Treatment (Class B misdemeanor)
  - Required # 44: Excluded if no Residence
  - Presumed # 2: Monitor Incentives and Sanctions
  - Presumed # 11: Test Results Available Within 48 Hours
  - Presumed # 12: Deliver Test Specimen Within 8 Hours
  - Presumed # 29: Measures to Prevent an Overdose (most are not drug users)
  - Presumed # 35: More than 15 Participants
  - Presumed # 37: New Arrests and Convictions Followed

Judge Fuchs stated historically, the Council has been provided information on justice courts' problem-solving courts but have not certified them because they mostly deal with misdemeanors, which would require a new set of certification criteria. Judge Fuchs said this court is the only justice court problem-solving court. There was concern that the court failed to meet basic criteria. Judge Pullan thought the Council should consider certifying problem-solving courts for justice courts. Judge Paul Farr said very few justice courts have the resources to provide these services. Judge Fuchs said most justice courts choose not to start problem-solving courts after discussions on the resources needed. Judge Connors thought the Council should have some control over these. Chief Justice Durrant recommended this be addressed with Policy & Planning.

Chief Justice Durrant thanked Judge Fuchs.

**Motion:** Judge Connors moved to certify all problem-solving courts listed above, including Judge Brady's mental health courts but to table Judge Gilmore's court, as amended. Judge Mark May seconded the motion, and it passed unanimously.

**7. PROBATION POLICIES 2.11, 2.12, 2.13, AND 2.14: (Neira Siaperas)**

Chief Justice Durrant welcomed Neira Siaperas. The Board of Juvenile Court Judges has proposed revisions of the following policies. Ms. Siaperas sought revision approval for section 2.12 and deletion of sections 2.11, 2.13, and 2.14.

**Section 2.12 Bind Over Cases**

This policy, formerly titled Serious Youth Offender, was last revised in May 2018. The purpose of this policy is to outline probation officers' responsibilities for cases eligible for bind-over (transfer) to the District Court.

**Section 2.11 Juvenile Sentencing Guidelines**

This policy was last updated July 1, 2003 and is being recommended for deletion. The Juvenile Sentencing Guidelines referenced in the policy were retired by the Utah Sentencing Commission in December 2020 and replaced with new Juvenile Disposition Guidelines.

**Section 2.13 Certification Investigation Report**

This policy was last updated in December 2019 and is being recommended for deletion. This policy is no longer necessary as probation officers are no longer required to complete certification reports.

**Section 2.14 Direct File for Criminal Proceedings**

This policy was last updated July 1, 2003 and is being recommended for deletion. This policy is unnecessary since the information is out-of-date and does not address probation processes.

Chief Justice Durrant thanked Ms. Siaperas.

**Motion:** Judge Michelle Heward moved to approve the revisions of section 2.12 and the deletion of sections 2.11, 2.13, and 2.14, as presented. Judge Farr seconded the motion, and it passed unanimously.

**8. CARRYFORWARD BUDGET REQUESTS: (Judge Mark May, Karl Sweeney, Heidi Anderson, Chris Davies, Tracy Walker, and Nick Stiles)**

Chief Justice Durrant welcomed Judge Mark May, Karl Sweeney, Heidi Anderson, Chris Davies, Tracy Walker, and Nick Stiles. Chief Justice Durrant thanked Judge May for his incredible work on the committee and noted the Council was smart in creating the Budget & Fiscal Management Committee. Judge May thanked Mr. Sweeney for his work.

**FY21 IT Services Budgeted but Work Not Completed in FY21 – Request to Carryforward IT Funds into FY22**

\$150,000

Funding was allocated in FY21 for Cisco's assistance working with the development team at the courts to build the public facing portal with Webex integration. They originally anticipated the project to be complete by June 30, 2021, however, it was not completed and this is a pay upon completion project.

### **Judicial Council Room A/V Upgrade**

\$50,000 (\$10,519 as carryforward and \$39,481 as FY22 one-time turnover savings)

The system is out of warranty by eight years, the equipment is discontinued, and recent audio issues suggest the system is at its end-of-life. This audio/video refresh will bring the room up to the current industry and court technology standard and meet current and future in-person and virtual meeting access needs.

### **Cisco Router Replacement**

\$160,000

The courts have 25 Cisco 2900 routers in our network that have reached their end-of-life. This means that Cisco will stop releasing security/vulnerability updates for this hardware. This would put the network at risk. The IT Department recommended replacing these with Cisco 8300 routers. The 8300 routers will have a minimum 12-year life span and accommodate bandwidth of up to 2GB.

### **Wifi AP Upgrade and Expansion**

\$120,000

The courts have 125 access points throughout the state (Model 3502) that need to be replaced in order to be able to upgrade controllers to the newest secure code base. This hardware is at its end-of-life and no longer supported or supplied security update by Cisco. Upgrading these will also give the courts the future capability of higher bandwidth on the wireless network.

### **Additional Third District Court Media Carts**

\$50,000 one-time funds

Over the course of a few years, the Third District Court had three media carts constructed for the Matheson Courthouse. Since most of the evidence that is now presented comes in an electronic format, it was important to develop a way that evidence could be presented electronically in the courtroom. It was cost prohibitive to put new technology into every courtroom; the court instead came up with a mobile solution. The court now has the capability of moving media carts into any courtroom for a jury trial.

### **Converting Appellate Courts to Webex Capable Courts & Two Public Viewing Agenda Monitors**

\$148,000 Option 1 (basic)

\$210,000 Option 2 (higher level)

Throughout the pandemic the courts have quickly embraced a more technology focused system. This focus not only increases community members access to the courts, it also for the most part is viewed favorably by members of the Bar. Applicable here, the Appellate Courts are tasked with hearing cases from across the state. This funding request will enable both courts to conduct hybrid in-person/remote oral arguments allowing for example, one party to appear remotely from St. George and one party to appear in-person in Salt Lake City. This funding request expands the court's mission as it removes barriers to an appellate system that is located exclusively in Salt Lake City.

Chief Justice Durrant thanked Judge May, Mr. Sweeney, Ms. Anderson, Ms. Davies, Ms. Walker, and Mr. Stiles.

**Motion:** Justice Himonas moved to approve the FY21 IT Services Budgeted but Work Not Completed in FY21 – Request to Carryforward IT Funds into FY22 in the amount of \$150,000 in one-time funds; the Judicial Council Room A/V Upgrade in the amount of \$50,000; the Cisco Router Replacement in the amount of \$160,000 in one-time funds; the WiFi AP Upgrade and Expansion in the amount of \$120,000 in one-time funds; the Additional Third District Court Media Carts in the amount of \$50,000 in one-time funds; and the Converting Appellate Courts to Webex Capable Courts & Two Public Viewing Agenda Monitor in the amount of \$210,000 in one-time funds requests as presented. Judge May seconded the motion, and it passed unanimously.

**9. GRANT UPDATE: (Jordan Murray)**

Chief Justice Durrant welcomed Jordan Murray. They are moving forward with the grants process. Mr. Murray thanked the Council for their assistance with the SJI grant.

Chief Justice Durrant thanked Mr. Murray.

**10. JUSTICE COURT TASK FORCE UPDATE: (Judge Paul Farr and Jim Peters)**

Chief Justice Durrant welcomed Judge Paul Farr and Jim Peters. In December 2019, the Supreme Court and Judicial Council created the Justice Court Reform Task Force. The Council took responsibility for ongoing direction of the Task Force. The purpose of the Task Force was to complete a comprehensive evaluation of justice court structure and operations, and provide a report to the Council of recommendations to strengthen and improve the provision of court services at the misdemeanor and small claims level. The Council invited stakeholder representatives to serve as members of the Task Force. Membership included representatives from the courts, the legislature, the Governor's office, prosecution and defense organizations, members of the bar, the Utah League of Cities and Towns and the Utah Association of Counties.

The Task Force began meeting monthly in May of 2020 and reviewed thousands of pages of reports, documents, and prior reforms in Utah.

The Task Force presented the Management Committee with their Report and Recommendations proposal. The Task Force believes that the reforms recommended would increase public access to justice, improve the quality of justice provided, and improve public perception of court services at the infraction, misdemeanor, and small claims level. These efforts are critical as this is the court level where most citizens come into contact with the judicial system.

Moving everything except infractions to the district courts under a new "division" court would require a statutory change. Justice court judges that are members of the State Bar could fill the positions needed in the division court. Hawaii had a model for resolving infractions that could be mimicked in Utah. Infraction appeals would be sent to the district court, similar to a de novo appeal.

Financial considerations show justice courts generate approximately \$42M annually in fines and fees. The cost of operating these courts as a whole is approximately \$42M annually, which identifies a fairly neutral financial scenario. Judge Farr mentioned that because justice courts are small with limited resources, a lot of substance abuse and treatment models cannot be

implemented. The guiding principles for the recommendation to create a division court included a qualified judge, on-the-record appeal, right to counsel, Article VIII courts, and substance abuse and mental health. The number of division judges needed would be approximately 30 judges, depending on whether Class A misdemeanors were included and whether a division court is district-wide or at a county level.

Practical considerations to the proposed changes included whether the recommended change would require a constitutional amendment, fiscal impacts of the changes, and different impacts of urban/rural reforms. Judge Connors observed that there are some district courts that currently handle misdemeanor courts. Judge Pullan asked if there was any legislative support for the changes. Judge Farr said Senator Cullimore served on the task force and has been a huge proponent of these recommendations.

The next step would be to create a workgroup to address implementation of the recommendations. The workgroup needs to consider the financial impact of reform, revisions to appropriate rules, and involving the Liaison Committee, and Policy & Planning Committee to create the appropriate rules. Simultaneously, the courts could work with legislators. The Task Force said their work, they believe, is done and now this should move to the implementation phase.

Judge Pullan thought the legislature may be in a better position to address the funds and revenue structures. Judge Farr wasn't sure if the legislature would have financial information since justice courts are locally controlled. Mr. Peters obtained financial information about local jurisdictions from websites because court personnel did not have information about the local government finances. Mr. Peters recommended formulating standards before addressing financials.

Michael Drechsel wondered if this should be addressed with the Judiciary Interim Committee as a follow up to the previous presentation. Judge Augustus Chin was impressed with the report and felt the report should be presented to the legislature again. Judge Connors personally could not accept the recommendations without reviewing additional impacts and recommended a joint study with the legislature. Mr. Drechsel explained at this point there should be outreach with stakeholders as groups. Mr. Drechsel offered to contact Representative Kerianne Lisonbee and Senator Todd Weiler. The legislature could perhaps conduct their own fiscal analysis with data received from the courts. The AOC can generate data on revenue but not expenses from justice courts.

Judge Pullan thought the Council could approve the Report as articulating a path toward the improvement of the Judiciary and would be interested in a plan being formulated as to where the Council goes from here.

**Motion:** Judge Pullan moved that the Council accepts these recommendations as articulating a path towards the improvement of the Judiciary and task someone with a strategic plan for moving forward. Judge Farr seconded the motion, and it passed unanimously.

Justice Himonas recommended creating a workgroup with the Supreme Court. Chief Justice Durrant agreed to the creation of a workgroup to identify the next steps in this process.

Mr. Gordon preferred to know the position of every group that would testify before the legislature. Mr. Gordon felt there is wisdom in receiving or adopting the report without committing to it so the courts can take the next step of receiving feedback from outside entities.

Chief Justice Durrant stated he was prepared to accept the recommendations because the Report was created by different entities who took many things into considerations but was willing to adopt the concept in principle with an explicit recognition in the motion that it would evolve over time as the courts solicit additional input and collect additional data.

Justice Himonas suggested the creation of a workgroup that provides quarterly updates with the Task Force members acting as a liaison to the workgroup. Judge Connors would feel more comfortable if the Council receives the report, establishes a workgroup to explore the next steps, but not formally adopt, accept or approve the recommendation. Justice Himonas said the implementation committee needs guidance. Chief Justice Durrant said this item could be tabled until the Council has had time to think about the proposal.

**Motion:** Judge Pullan moved that the Council approve the recommendations of the Task Force recognizing that the proposals made could evolve over time with further information from stakeholders. Justice Himonas seconded, and it passed with Judge Connors abstaining.

**Motion:** Justice Himonas moved to form a workgroup Chaired by Judge Farr, additional members to be determined, to take next steps toward exploring the implementation of the Task Force's recommendations. Judge Connors seconded, and it passed unanimously.

Judge Chiara asked that the Council's executive committees address this proposal.

Chief Justice Durrant thanked Judge Farr and Mr. Peters.

#### **11. WELLINGTON AND CARBON COUNTY INTERLOCAL AGREEMENT: (Judge Jon Carpenter and Jim Peters)**

Chief Justice Durrant welcomed Judge Jon Carpenter and Jim Peters. The town of Wellington is a suburb of Carbon. Wellington Justice Court's only court clerk resigned. The Wellington Justice Court is being staffed by Carbon County Justice Court staff. Wellington Justice Court and Carbon County Justice Court felt an interlocal agreement would be the best scenario for all involved. They want to make this effective September 1, 2021.

Chief Justice Durrant thanked Judge Carpenter and Mr. Peters.

**Motion:** Justice Himonas moved to approve the interlocal agreement between Wellington Justice Court and Carbon County Justice Court, effective September 1, as presented. Judge Connors seconded the motion, and it passed unanimously.

#### **12. JUSTICE COURT JUDGE CERTIFICATIONS: (Jim Peters)**

Chief Justice Durrant welcomed Jim Peters. Mr. Peters introduced Eric Jewel, selected to be the new judge for the Payson Justice Court and the Santaquin/Genola/Gosha Justice Courts and Barbara Finlinson, who was selected as the new judge for the Nephi Justice Court.

Chief Justice Durrant thanked Mr. Peters.

**Motion:** Judge Chin moved to approve Judge Eric Jewel to be the new judge for the Payson Justice Court and the Santaquin/Genola/Gosha Justice Courts and Judge Barbara Finlinson, who was selected as the new judge for the Nephi Justice Court, as presented. Judge Farr seconded the motion, and it passed unanimously.

**13. FOURTH DISTRICT COURT COMMISSIONER VACANCY: (Judge Jennifer Brown and Mark Urry)**

Chief Justice Durrant welcomed Judge Jennifer Brown and Mark Urry. CJA Rule 3-201(3)(B) requires the Council's approval to fill a commissioner vacancy. The Senate confirmed Commissioner Sean Petersen on August 18, 2021 to the Fourth District Court Bench. This transition resulted in a commissioner vacancy in the Fourth District Court. The Fourth District Court currently has two FTE commissioner positions and wants to advertise to fill the now empty commissioner position.

In 2020, Commissioner Petersen's domestic inventory alone consisted of 1,539 filings, which is 30-40% of the total domestic inventory in Utah County. He also hears monthly domestic cases (in-person pre-pandemic; virtually during the pandemic) in Fillmore, Heber and Nephi, in addition to all ORS cases for Provo and American Fork. Pre-pandemic, Commissioner Petersen's calendars consisted of 12-13 hearings every day, in addition to 25 ORS hearings every-other Friday. During the pandemic, Commissioner Petersen has maintained his caseload to avoid a large backlog. His current daily calendars consist of 8-9 hearings each day.

**Motion:** Judge Pullan moved to approve filling the Fourth District Court commissioner vacancy. Judge Connors seconded the motion, and it passed unanimously.

**14. OLD BUSINESS/NEW BUSINESS**

No additional business was addressed.

**15. EXECUTIVE SESSION**

An executive session was not held.

**16. CONSENT CALENDAR ITEMS**

a) Committee Appointments. Appointment of Stephen Kelson, Talatou Abdoulaye, and Anne Cameron to the ADR Committee. Appointment of Sharla Dunroe and Janet Lawrence to fill the defense counsel positions and Jeffrey Mann and Richard Pehson to fill the prosecutor positions to the MUJI – Criminal Committee. Approved without comment.

**17. ADJOURN**

The meeting adjourned.



**JUDICIAL COUNCIL  
BUDGET AND PLANNING SESSION**

**Minutes  
August 20, 2021  
Matheson Courthouse  
Meeting held through Webex  
8:00 a.m. – 12:59 p.m.**

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

**Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Samuel Chiara  
Hon. Augustus Chin  
Hon. David Connors  
Hon. Paul Farr  
Hon. Michelle Heward  
Justice Deno Himonas  
Hon. Mark May  
Hon. David Mortensen  
Hon. Derek Pullan  
Rob Rice, esq.  
Hon. Brook Sessions

**Excused:**

Hon. Todd Shaughnessy, Vice Chair  
Hon. Brian Cannell  
Hon. Ryan Evershed  
Hon. Kara Pettit

**Guests:**

Hon. Marvin Bagley, Sixth District Court  
Jonathan Ball, Legislative Fiscal Analyst  
Jim Bauer, JTCE, Third Juvenile Court  
Hon. Dennis Fuchs, Senior Judge  
Scotti Hill, Attorney  
Hon. Keith Kelly, Third District Court

**AOC Staff:**

Ron Gordon  
Cathy Dupont  
Michael Drechsel  
Heidi Anderson  
Shane Bahr  
Paul Barron  
Alisha Johnson  
Tania Mashburn  
Jordan Murray  
Bart Olsen  
Zerina Ocanovic  
Jim Peters  
Jon Puente  
Nini Rich  
Neira Siaperas  
Nick Stiles  
Karl Sweeney  
Shonna Thomas  
Jeni Wood  
Kim Zimmerman

**Guests (cont.):**

Kristina King, OLRGC  
Hon. Mark Kouris, Third District Court  
Chris Morgan, TCE, Sixth District Court  
Nate Talley, Deputy Director, GOPB

- 1. WELCOME: (Chief Justice Matthew B. Durrant)**  
Chief Justice Matthew B. Durrant welcomed everyone to the meeting.
- 2. OVERVIEW: (Ron Gordon)**  
Ron Gordon provided an explanation of the process for budget requests and the duties of the Judicial Council.

Annually, the Judiciary submits requests to the Legislative Fiscal Analyst Office (LFA) for ongoing and one-time funding for new initiatives. Before these requests are submitted to the LFA, the Judicial Council reviews the requests and determines if they should go forward through the legislative process. The final prioritized list is called the Annual Budget Plan. The requests have been reviewed and prioritized by the Budget and Fiscal Management Committee for discussion and approval by the Council. Requests that are approved by the Council to forward to the Legislature will be addressed in the General Session.

The requests approved for advancement to the Legislature will fall into one of the following two categories:

- a) **Judicial Priorities/Building Blocks** – Items requested that the Council elects to pursue through the legislative appropriations process. Building block requests are submitted to the Legislature and to the Governor.
- b) **Legislative Fiscal Note** – Items requested by a Board or Committee that the Council elects to pursue through legislation and an accompanying fiscal note (i.e. the addition of a new judge requires legislation and, therefore, cannot be submitted via a building block and would be required to go through the legislative fiscal note process).

### 3. **UTAH ECONOMIC OUTLOOK: (Nate Talley)**

Chief Justice Durrant welcomed Nate Talley, Deputy Director and Chief Economist for the Governor's Office of Planning and Budget. State growth factors include federal stimulus shocks, population growth, optimism, and COVID experience and response. Potential risk factors include revenue sustainability, inflation, labor shortages, and public benefit enrollment. Utah had a 18.4% increase in population from 2010 to 2020. Consumer confidence has declined nationwide, most likely due to the Delta variant. Utah has a 2.7% unemployment rate. As of May, housing costs were up 30%.

#### Sales tax revenue

The General Fund Portion of state sales tax collections are preliminarily estimated to have grown by 16.5% overall in Fiscal Year 2021, outpacing the General Fund sales tax estimate of 9.6%.

#### Income tax revenue

Individual income tax collections are preliminarily estimated to have grown by 53.3% in Fiscal Year 2021, against a Consensus projection of 44.3%.

#### Combined education fund/general fund

Initial estimates suggest a sizable year-end revenue surplus of \$800 million relative to adopted Consensus numbers. This initial estimate will be adjusted as final accounting closeout occurs.

<b>Economic indicators</b>	<b>CY20</b>	<b>CY21(est.)</b>	<b>CY22(forecasted)</b>
Population	1.5%	1.4%	1.4%
Nonfarm Employment	-1.3%	4.4%	2.9%
Unemployment Rate	4.7%	2.7%	2.8%
Total Personal Income	8.5%	5.5%	2.6%

Taxable Retail Sales	8.4%	16.4%	4.0%
Residential Permit Value	9.1%	26.4%	3.8%

Chief Justice Durrant thanked Mr. Talley and appreciated his presentation.

#### **4. LEGISLATURE’S APPROACH TO FY23 BUDGET: (Jonathan Ball)**

Chief Justice Durrant welcomed Jonathan Ball, Legislative Fiscal Analyst. Mr. Ball explained that the state is projecting a surplus of 800M. The challenge with having an \$800M surplus includes managing expectations. Perception of the surplus is a concern. Fiscally speaking, in a normal growth year, surplus can be tripled to estimate how much new revenue is available for the budget. Surplus is funds that have already been collected. If expectations are set too high, promises must either be made or broken so controlling the expectations during the legislative session will be critical.

More than 12% of the normal gross domestic product (GDP) has been injected into the state’s economy in one year by the federal government. Normally, the state has 4% growth in GDP. The state did not include the American Rescue Plan Act in the revenue estimates.

The state is conscious of the fact that one-time revenue can’t be spent more than once so they have a set of tools to assist with sustainability. Inflation is a concern because the state is now required by law to pay for inflation in public education (Constitutional Amendment G). Another concern is wage inflation due to a lot of turnover in high demand jobs, such as, social services, law enforcement, corrections, and judicial assistants.

The state is paying attention to people migrating to Utah, perhaps in a transitory position where they move to Utah but work remotely through an out-of-state job with the intent of not staying in Utah long term.

The legislature will need to restore some of the budget changes that were made as a result of the pandemic. Some examples he gave included the need to pay off the bond in the amount \$300M for the prison, \$120M for higher education was rescinded during the June special session, that will need to be readdressed, water, \$1.2B in transportation needs, and seismic upgrades in public buildings. These one-time funding items will pay off in the future.

Mr. Ball said they try to avoid one-time funding for FTEs but understands that it occasionally occurs. Mr. Ball recommended fixing those imbalances. Judge David Mortensen asked if there would be an uptick in property tax revenue based on real estate values. Mr. Ball explained that because of a property tax equalization, there will not be an increase for existing houses unless the municipalities and counties act to maintain rates at the current level. There will be an increase associated with new housing units.

Mr. Ball described the legislative process for the budget. Generally speaking, a budget request is sent to the legislature with the Governor’s budget recommendations. The legislature starts the process with the prior year’s ongoing appropriation, which is called the base budget bill. The base budget bills are determined in December of each year through the executive appropriations subcommittee and must be passed by the 10<sup>th</sup> day of the general session. The

primary reason for the base budget bill is to ensure proper transition from year to year. The next step occurs about the second to the last week of the 45-day general session. The legislature passes six supplemental bills to the base budget: compensation, internal service funds, current budget year public education changes, new year public education changes, and one bill for everyone else (current and new year). The last item for the legislature, at midnight on the last day of the general session, is appropriation adjustments, which includes funding fiscal impact bills resulting from legislation that passed.

The legislative leadership relies on subcommittees to prioritize budget requests. The Executive Office and Criminal Justice Appropriations Subcommittee considers and prioritizes the Judiciary's requests. The obvious first strategy is to have the budget request items as high on the priority list as possible. The leadership team then reviews all of the subcommittees lists' and determines which requests could fit in the revenue estimate. In the past, requests in the Governors budget were considered eligible for the prioritization practice. Lately, however, budget requests for appropriations that are sponsored by a legislator are getting more attention. Mr. Ball explained that the Judiciary may have an advantage as the third branch of government because having Chief Justice Durrant speak to the Speaker of the House and the President of the Senate can be meaningful. The caucuses will ultimately determine if there is enough support for the requests.

Chief Justice Durrant thanked Mr. Ball and appreciated his insights and counsel.

## **5. CASE FILINGS/WEIGHTED CASELOADS FY21: (Paul Barron, Shane Bahr, and Neira Siaperas)**

Chief Justice Durrant welcomed Paul Barron, Shane Bahr, and Neira Siaperas. The information included in a caseload is compiled using methodology developed by committees for each weighted caseload: district, juvenile, justice, and district and juvenile clerical. The weighted caseloads represent the needed judicial or clerical resources relative to available resources. The need is calculated in terms of certain case filings or events multiplied by the weights or hours needed to complete the tasks for those filings or events. For district and juvenile courts, an interim report is provided in May and the final report is provided in August.

The reports presented to the Council were prepared using a 3-year average of case filings or events, while in previous years, only the prior fiscal year's counts were used. This change was implemented for the FY21 Interim Report at the recommendation of the National Center for State Courts (NCSC) according to their best practices and helps moderate the effects of any single year being especially high or low for case filings or events.

The 3-year average for the FY21 Final Reports was calculated using case filings from July 1, 2018 to June 30, 2021, in one-year intervals (FY19, FY20, and FY21). The Interim Report prepared in May used the 3-year average of case filings from April 1, 2018 – March 31, 2021, also in one-year intervals. As expected, this slight shift in time frame resulted in a slight change in the overall judicial and clerical needs. Replacing the April 1, 2018 – June 30, 2018 counts, which was a relatively high quarter for case filings, with the April 1, 2021 – June 30, 2021 counts, which was a particularly low quarter for case filings, resulted in a lower overall 3-

year average of case filings than was used for the FY21 Interim Report. Since the start of the pandemic in March 2020, the courts have seen an overall decrease in case filings.

Previously reported findings are included in the tables for district and juvenile judicial weighted caseloads to show the change over time. Prior years' results were not prepared using a 3-year average but reflect the caseloads of a single fiscal year. Additionally, no figures were included in the charts for FY20 since a final report was not published in that year due to the pandemic and the NCSC review.

### **District Court Judicial Weighted Caseload**

Statewide, the district judicial weighted caseload shows relatively balanced Judicial staffing with a statewide understaffing of less than one full judicial officer (-0.6). This went down slightly from the Interim Report which showed a statewide need of just over one judicial officer (-1.3). This slight decrease was expected because of the shift of the time frame to include less pre-pandemic time with higher filing counts and more pandemic time with lower filing counts. As intended, the 3-year average did help temper those effects, as the filings for FY21 were the lowest of the three years used.

The individual needs of each district vary, with the greatest staffing need in the Third District Court showing a need of just under two judicial officers (-1.9). No other district exceeds a need or overstaffing of more than one judge. Three districts show some slight understaffing, three districts indicate slight overstaffing and the remaining two districts indicate no need.

### **Juvenile Judicial Weighted Caseload**

The juvenile judicial weighted caseload shows significant changes from the last report prepared in 2019. This is due to a significant overhaul to the case weights that was conducted in 2020. Upon request of the juvenile bench, a committee was created to review and assess the case weights used in this report. The last time extensive changes were made to the juvenile weighted caseload report was in 2010. As a result of legislative and practice changes since 2010, the bench believed the report inaccurately reflected the hours needed to complete their work.

The changes to the juvenile judicial weighted caseload included the addition of new case types and the review of several different hearings and event types resulting in new case weights on all case types. Additionally, the committee surveyed judges about their travel time and adjusted the travel time allotted in each district. Overall, the changes reflect an increase in workload compared to previous years, especially in the years following implementation of HB239 in 2017. This highlights the judges' concern that after HB239 the report no longer represented their work accurately.

Overall, the FY21 final report shows a need of 1.6 juvenile court judges statewide. The Fourth District Court shows the greatest need at 1.7 judges. No other district shows a need or overstaffing of more than one judge.

### **Clerical Weighted Caseload**

The clerical weighted caseload includes district and juvenile courts due to the dual nature of several of the smaller districts. In those districts, the court needs are combined as staff may be assigned to work in both district and juvenile courts.

Due to the pandemic and the review by the NCSC, this report and the work of the juvenile weighted caseload committee was put on hold in FY20. Prior to the pause, the committee decided to eliminate the case managers and team managers from being considered as available resources for the weighted caseload. The committee agreed that they are less available to perform the work of a judicial assistant than when the methodology was developed, making them more available to perform their supervisory roles. Because of this change, comparing the FY21 clerical caseload to any prior year is difficult, as the prior years consistently showed significant overstaffing, likely due to the overestimation of the case and team managers' availability to perform judicial assistant work.

The final FY21 statewide clerical need shows an overstaffing of 1.92, whereas the interim report showed a shortage of 1.79 FTE. This is due to more pandemic months being included in the final 3-year average.

Chief Justice Durrant thanked Mr. Barron, Mr. Bahr, and Ms. Siaperas.

### **6. BUDGET AND FISCAL MANAGEMENT PRIORITIZATION PROCESS: (Judge Mark May, Bart Olsen, Heidi Anderson, Jon Puente, Shane Bahr, Neira Siaperas, Judge Keith Kelly, Shonna Thomas, Chris Morgan, Judge Brody Keisel, and Judge Mark Kouris)**

Chief Justice Durrant welcomed the presenters. Factors in ranking items include

- How essential is this request to accomplish the mission of the courts, and
- Does the expenditure provide a good return on the investment?

**Motion:** Judge May moved to go into an executive session to discuss a security concern. Judge Pullan seconded the motion, and it passed unanimously. The Council reconvened the public meeting.

### **Judicial Assistants Recruit and Retain. Bart Olsen**

\$3,900,000 ongoing

Bart Olsen described the critical need to increase salaries for judicial assistants. The high level of turnover for judicial assistants is a crisis sustained nearly through the entire past decade. Judicial assistants carry out a core function of Utah's courthouses. Additional funding would restore the ability of the Judiciary to internally manage business processes, organizational operations, staff training, and other related matters successfully with an acceptable level of turnover within the core functions.

Judge Derek Pullan asked about the current turnover rate and what the targeted turnover rate should be. Bart Olsen said the turnover rate in 2020 was 16.5% and the goal is between 5-10% turnover, which is industry standard. The pandemic created a downward trend in turnover rate to 16.47% from 17.84% in 2019. The courts have about 55 open, active JA recruitments,

which is about 1/5 of total JA positions. In 2011, the JA pay rate was about 80% of the average Utah non-farm employment rate. In 2020, the JA pay rate declined to about 70%. Mr. Olsen said the rate of pay is a significant factor in the turnover rate. The courts churn rate is 21.86% below what is considered full employment. Turnover is when an employee leaves an organization. Churn is when an employee moves from one position to another within the organization.

Mr. Olsen explained that exit surveys completed by judicial assistants who leave the courts show average, salary is the among the highest percentage of reasons given for leaving the courts.

**IT Infrastructure and Development. Heidi Anderson**

\$1,122,000 ongoing

To improve access to justice in Utah by improving the courts' information technology infrastructure and development through upgrading outdated hardware/software, ensuring ongoing funding for critical security software and adding additional development staff. This request includes all of the \$802,000 of one-time IT spending requests approved in the 2021 Legislative Session. To those requests they have added a request for spending an additional \$320,000 of ongoing funds to address a critical need to purchase cyber security ransomware insurance. All of these requests are urgent. And that urgency has only increased with the issues surrounding access to justice in a post-COVID court system. All of these requests will enable to the courts to move forward in efforts to serve the people of Utah.

**Public Outreach Coordinator. Jon Puente**

\$120,000 ongoing

The Committee on Judicial Outreach and the Committee on Resources for Self-Represented Parties recommended the creation of a Public Outreach Coordinator position. The position was also recommended in the past by the courts' Racial and Ethnic Fairness Study. The public outreach coordinator is necessary to invest more time and resources toward actively reaching out to marginalized communities, to provide more public education about the role and functions of the Judicial Branch, and to reach self-represented litigants during a time of social and economic uncertainty. Both the National Center for State Courts and the Chief Justice of the Supreme Court of the United States have identified an urgent need for the role of a public outreach coordinator. Last fiscal year, the Judicial Council approved and funded a public outreach coordinator with one-time funds and housed the position in the Office of Fairness and Accountability. In a short time, the OFA through the Public Outreach Coordinator has started to formalize and coordinate efforts to forge important partnerships, engage community leaders, and spearhead outreach efforts to historically marginalized communities in need. Mr. Puente is working to create a uniform program that judges can use when presenting to schools.

**Statewide Treatment Court Coordinator. Shane Bahr, Neira Siaperas**

\$97,700 ongoing

This is a new shared position that will serve juvenile and district courts. This position will be housed at the AOC and primary supervision will be provided by the District Court Administrator in collaboration with the Juvenile Court Administrator. In March, 2019 the Council requested a small workgroup be created and tasked with conducting an inventory of treatment court coordination and certification. The work product from this workgroup resulted in

the Inventory and Recommendations Concerning Coordination and Certification of Problem-Solving Courts in Utah Report, which was submitted the Council in November, 2019. Members of the workgroup concluded that a more structured and robust coordinating approach at the state and local level needs to be implemented.

Mr. Bahr envisioned that this position would assist Judge Fuchs who will serve as a subject-matter expert, create training curriculum, and distribute pertinent information to the courts and court entities. Judge Fuchs is paid through a contract from the Division of Substance Abuse and Mental Health.

**Court Visitor Program Coordinator. Judge Keith Kelly, Shonna Thomas**

\$92,024 ongoing OR one-time funds

The Court Visitor Program, under the Guardianship Reporting and Monitoring Program (GRAMP), provides to judges a cadre of trained volunteers to serve as court visitors in guardianship and conservatorship proceedings. GRAMP was created to assist the Judiciary, provide the court with tools to establish accountability in guardianship and conservatorship cases, and to detect potential abuse in the vulnerable adult population. Current funding supports two FTE who work under GRAMP. This program has been overwhelmingly successful and an additional FTE is needed to manage the current workload and to expand services to other vulnerable adults and children in the state of Utah.

**Sixth District Court Juvenile Judge. Judge Brody Keisel, Chris Morgan**

\$449,100 ongoing

\$25,000 one-time funds

\$474,100 Total

The Sixth District Court sought funding for a new juvenile court judge and two JAs for a variety of reasons. The Sixth District Court is the only district in the state with just one juvenile court judge. It is also the only district with only two district court judges. In spite of the small number of judges it is an enormous district, geographically speaking. The district encompasses six counties, covering more counties than any other judicial district in the state. As such, there are a variety of juvenile court dockets being heard in six different counties by one judge every month. In addition to those courtroom calendars, the juvenile court judge carries a partial district court caseload. Not only is this a challenge for the judge, it is also a challenge for the judicial assistants who have to work in both a juvenile court and district court setting.

The methodology and case weights for the juvenile judicial weighted caseload were revised and updated in 2020 to align with statutory, policy, and practice changes affecting the work of juvenile court judges. The 2020 modifications in the juvenile study were the first significant changes to the methodology and case weights since 2010. The FY21 juvenile judicial weighted caseload report indicates an overall statewide need for 1.6 juvenile court judges, including the need for .6 of an additional juvenile court judge in the Sixth District Court. The only juvenile court judge in the Sixth District Court currently carries a 158% workload (total hours needed/total available hours).

Other Factors

- A 180% increase in Child Welfare Cases in Sixth District Court over the last six years



- Potentially negative impact on compliance with statutorily required timelines due to the lack of available court dates for child welfare hearings
- Sustained population growth in Sanpete and Sevier Counties
- Anticipated legislation that would expand juvenile court jurisdiction for offenses committed by individuals over the age of 18

Judge Bagley said the three judges cover both district and juvenile courts. Justice Deno Himonas felt the Council should determine the accuracy of weighted caseloads in situations where district and juvenile courts share judges. Judge Pullan remembered that the Council discussed the thresholds a few years ago.

Judge Samuel Chiara said the Seventh District Court has two judges but it was reported that they have .9 juvenile court judges too many. Neira Siaperas mentioned the Board of Juvenile Court Judges and the Seventh District Bench agreed to assist the Sixth District Court, although scheduling and traveling challenges are of concern. The “one family – one judge” model used in the courts is difficult to meet in these situations. Judge Michelle Heward said the impact of the evidence-based practice is more critical in juvenile cases in rural areas.

### **Third District Court Criminal Commissioners. Judge Mark Kouris**

\$584,000 ongoing

Based on the FY21 district judicial weighted caseload report there is a need for judicial officers in the Third District Court (1.9), the Fourth District Court (.2), and the Sixth District Court (.2). At the same time, the report indicates there are potential judicial resources available in the First, Second, and Seventh District Courts. In the end, the district judicial weighted caseload report showed an overall statewide need of .6 district judicial officers. While the number of judicial officers needed per the weighted caseload report is important to consider, the need should also be evaluated relative to the total number of judicial officers in the district.

As reflected in the multi-year district judicial weighted workload study, the data continues to show judicial need in the Third District Court. In FY19, (pre-pandemic) the workload study indicated a need for 3.7 judicial officers in the Third District Court. The judicial need indicated in the FY21 study dropped to 1.9 judicial officers. A fifty percent reduction in anticipated need from the previous report which can largely be attributed to a significant decrease in filings as a result of the pandemic. Judge Kouris recognized that productivity has declined in the Third District Court.

More than 18,000 people go through first appearance calendars in a courtroom each year. The legal defender’s office and the district attorney’s office have provided attorneys for first appearance calendars. Justice Himonas thought this was an excellent idea but asked if the General Counsel’s Office had opined on the constitutionality of commissioners. Judge Kouris stated the reality is that even if new judges were hired, that wouldn’t reduce the calendar time by very much and the need for first appearance court would still be present. The commissioners/magistrate’s duties would not cross the constitutionality issue. Judge Brendan McCullagh is working to change Utah Code § 78A-2-220 to allow justice courts to order no-bail holds.

Chief Justice Durrant thanked the presenters.

**7. FINALIZE JUDICIAL COUNCIL PRIORITIES: (Judge Mark May)**

Chief Justice Durrant welcomed Judge Mark May. Judge May described the process for the Judicial Council members who may by motion and vote, assign any requests not advanced as a Judicial Priority/Building Block or Legislative Fiscal Note into one the following two categories:

**a) Deferral or Alternative Funding**

**i. Deferral** – Items which are removed from consideration for general fund money in the general session and will be brought back to the Council in the spring or summer for reconsideration of funding through 1) submission as a general session judicial priority for the next year; 2) year-end surplus funds (one-time funds); 3) carryforward funds (one-time funds) or 4) ongoing turnover savings (ongoing funds generally used for personnel matters).

**ii. Alternative funding**—Items requested for which funding may be available from sources other than the legislature including grants and items (2), (3) or (4) above.

**b) Elimination** – Items that are requested that the Council elects not to pursue during the legislative general session are removed from consideration for general fund money and will not be automatically considered again.

The Council discussed the merits of placing multiple IT requests into one budget request versus voting on the requests separately. Ms. Dupont stated the Council decided in previous years to reduce the number of legislative requests as a strategy.

The Council agreed that future IT budget requests do not need to be bundled, however, the Council accepted that this year's request was bundled because that was how the legislature approved it last year. Chief Justice Durrant noted that the Council can unbundle requests if they choose. Judge Mortensen asked if the legislature approved a bundled sum, would the funds need to be spent specifically as identified in the request. Alisha Johnson confirmed the funds must be spent as identified. Ms. Dupont felt the courts have an obligation to accurately spend the money appropriated by the legislature. Under certain situations, there are slight adjustments but the authority for spending comes from the Council and legislature. Judge Connors wanted to know how the Council monitored the spending of funds they approved. Mr. Gordon said the AOC will provide a year-end overview of what was asked for, what was received, and how those funds were spent.

Judge Connors requested the Court Visitor Program be moved above the Treatment Court Coordinator. Justice Himonas said the Board of Appellate Court Judges felt there was a priority for the Office of Fairness and Accountability.

From his perspective, Justice Himonas thought the Third District Court Commissioners request, once the constitutionality issue is resolved, made a strong case. Judge Mortensen found the Third District Court's presentation inconsistent, believing district court judges should be able to handle the first appearance calendars. Judge Connors recommended creating a study

committee to address the Third District Courts request for commissioners. Rob Rice agreed and added that the Council should review the statutory requirements.

Fiscal notes are attached to legislation. Building blocks do not require statute to advance. Deferred items are not sent to the Legislature.

The Committee completed the prioritized list. The results of the voting are as follows:

Ranked	Amount	Ongoing or One-time	Item
1 <sup>st</sup>	\$3,900,000	Ongoing	Judicial Assistants Recruit and Retain
2 <sup>nd</sup>	\$1,122,000	Ongoing	IT Infrastructure and Development
3 <sup>rd</sup>	\$120,000	Ongoing	Public Outreach Coordinator
4 <sup>th</sup>	\$25,000	One-time	Sixth District Court Juvenile Judge
	\$449,100	Ongoing	(Included with the Sixth District Court request)
5 <sup>th</sup>	\$92,024 (changed by Finance after meeting to \$92,100)	Ongoing	Court Visitor Program Coordinator
6 <sup>th</sup>	\$97,700	Ongoing	Statewide Treatment Court Coordinator
Removed	\$584,000	Ongoing	Third District Court Criminal Commissioners

The total approved request for ongoing funds is \$6,264,900 and for one-time funds is \$25,000.

**Motion:** Judge Pullan moved to set the Judicial Assistants Recruit and Retain request for \$3,900,000 in ongoing funds in the first prioritized position. Justice Himonas seconded the motion, and it passed unanimously.

**Motion:** Justice Himonas moved to make the IT Infrastructure and Development request for \$1,122,000 in ongoing funds in the second prioritized position. Judge May seconded the motion, and it passed with Judge Connors opposing.

**Motion:** Justice Himonas moved to ensure that as a matter of policy that the Council will not vote on any judicial officer requests without having a district-by-district comparison. Judge Connors seconded the motion, and it passed unanimously.

**Motion:** Justice Himonas moved to remove the Third District Court Criminal Commissioners request to send it to a one-year study committee. Judge Connors seconded the motion, and it passed unanimously.

**Motion:** Justice Himonas moved to remove the Sixth District Court Juvenile Judge request to send it to a one-year study committee. Judge Connors seconded the motion. Justice Himonas withdrew his motion.

Judge Chiara believed the Sixth District Court Juvenile Judge request should remain on the ranking list. Judge Heward recalled there was a similar request that was put forth. Ms. Siaperas said the Board of Juvenile Court Judges could coordinate coverage to assign and maintain cases between the Sixth and Seventh District Courts. Chief Justice Durrant agreed with the idea that the Council needs to consider these decisions based on an agreed upon standard and based on a review of statewide data from the districts. Chief Justice Durrant reminded the Council that they were provided comparative data for the Sixth District Court request. Judge May preferred not to remove the Sixth District Court request. The Council agreed to leave the request on the list.

Judge Connors informed the Council that the court visitor program statute requires a court visitor to meet with an individual when a protected person cannot appear in court and a statutory duty to monitor reports. Judge Connors noted the courts are filling the statutory requirements but are many months behind on cases.

Chief Justice Durrant thanked Judge May.

**Motion:** Justice Himonas moved to approve the list as prioritized as listed above and send the entire list to the Legislature. Judge Connors seconded the motion, and it passed unanimously.

**8. ADJOURN**

The meeting adjourned.

# Tab 2

**JUDICIAL COUNCIL'S  
MANAGEMENT COMMITTEE**

**Minutes  
September 14, 2021  
Meeting held through Webex  
12:00 p.m. – 1:15 p.m.**

*Chief Justice Matthew B. Durrant, Presiding*

**Committee Members:**

Chief Justice Matthew B. Durrant, Chair  
Hon. Paul Farr  
Hon. Mark May  
Hon. David Mortensen

**Excused:**

Hon. Todd Shaughnessy, Vice Chair

**Guests:**

Megan Haney, Chief PO, Third District Court  
Hon. Brendan McCullagh, West Valley Justice Court

**AOC Staff:**

Ron Gordon  
Cathy Dupont  
Michael Drechsel

**AOC Staff Cont.:**

Lauren Andersen  
Heidi Anderson  
Shane Bahr  
Tracy Chorn  
Gage Hansen  
Wayne Kidd  
Tania Mashburn  
Bart Olsen  
Jim Peters  
Nini Rich  
Keri Sargent  
Neira Siaperas  
Nick Stiles  
Keisa Williams  
Jeni Wood

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting.

**Motion:** Judge Paul Farr moved to approve the September 1, 2021, August 18, 2021, August 10, 2021, and August 4, 2021 Management Committee minutes, as presented. Judge Mark May seconded the motion, and it passed unanimously.

**2. STATE COURT ADMINISTRATOR'S REPORT: (Ron Gordon)**

Ron Gordon is enjoying his visits to the districts meeting with judges and court personnel.

### 3. **EDUCATION COMMITTEE REAUTHORIZATION: (Judge Diana Hagen and Lauren Andersen)**

Chief Justice Durrant thanked Lauren Andersen for her work on Supreme Court justices' biographies. Ms. Andersen reviewed the Education Committee's work and requested this item be placed on the Council agenda for reauthorization.

The years 2020-2021 saw major changes for the department with the introduction of new tools, new people, and increased services during the pandemic.

#### **Key performance metrics**

- Over 4,825 enrollments in employee courses
- 79% of those enrollments received credit
- Launched a new Learning Management System (LMS) to 1,800 court employees. 1,785 of those users are active.
- Hosted 5 virtual judicial conferences, 4 new judge orientations, 1 new employee conference and 1 justice court clerks conference.

In August 2020, they brought in Kimberlee Zimmerman as the Justice Court Education Coordinator, who develops education programs for justice court clerks and supports continuing education needs for judges and justice court employees. In May 2021, Libby Wadley moved from the position of Online Training Specialist to the Learning Management System Administrator. They also welcomed a new Director, Lauren Andersen, in January, 2021.

The COVID pandemic required the department to rethink how educational content could be delivered by utilizing tools that allowed employees to learn outside of the classroom.

#### **Tools include**

- The Learning Management System (LMS) that allows all judicial employees to access asynchronous courses that are pre-recorded and gamified.
- Open Sesame's 25+ program that places asynchronous training into the LMS. Open Sesame courses are offered in addition to Career Track trainings and available to all court employees.
- Proof of training certifications in the LMS for Annual Court Security, PCI, Court Security Awareness (Justice Courts), and Electronic Mail Retention.
- Webex meetings, events and trainings to deliver all live courses and seminars and all virtual conferences and summits.

**Motion:** Judge Farr moved to approve placing the Education Committee Reauthorization item on the Council agenda, as presented. Judge May seconded the motion, and it passed unanimously.

### 4. **APPELLATE COURTS RISK RESPONSE CHECKLIST: (Nick Stiles)**

Nick Stiles presented the appellate courts' Risk Phase Response Checklist. The Supreme Court and Court of Appeals requested to be permitted to operate in the Yellow Phase with precaution due to the rising COVID cases and in accordance with the Administrative Order. Vulnerable employees are advised to seek accommodations through the HR Department. Provisions set by the appellate court are not all in place because the appellate courts have been operating remotely, therefore, the courtrooms are not being used.

**Motion:** Judge May moved to approve the appellate courts' Risk Phase Response Checklist, as presented. Judge Farr seconded the motion, and it passed unanimously.

**5. COMMITTEE APPOINTMENTS: (Nini Rich and Michael Drechsel)**  
**ADR Committee**

Nini Rich stated with Judge Hansen's retirement, the Chair position needed to be filled on the ADR Committee. The ADR Committee recommended Judge Adam Mow to fill the Chair position.

**Motion:** Judge Farr moved to approve the appointment of Judge Adam Mow as Chair of the ADR Committee, as presented, and place this on the Judicial Council consent calendar. Judge May seconded the motion, and it passed unanimously.

**Technology Committee**

Heidi Anderson sought approval of the reappointment of Judge Clemens Landau to a second term, the appointment of Judge Diana Hagen, and the appointment of Dawn Hautamaki to the Technology Committee.

**Motion:** Judge Farr moved to approve the reappointment of Judge Clemens Landau to a second term, the appointment of Judge Diana Hagen, and the appointment of Dawn Hautamaki to the Technology Committee, as presented, and place this on the Judicial Council consent calendar. Judge May seconded the motion, and it passed unanimously.

**MUJI-Criminal Committee**

Michael Drechsel said with the term expiration of Judge Michael Westfall, the MUJI-Criminal Committee recommended Judge Teresa Welch fill the district court judge position.

**Motion:** Judge May moved to approve the appointment of Judge Teresa Welch to the MUJI-Criminal Committee, as presented, and place this on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

**6. RECORDS ACCESS APPEAL: (Gage Hansen)**

Gage Hansen informed the committee that Brady Eames appealed the denial of his request for any and all notices from the court of the proposed and adopted amended URCrP 22(e)(2) and an invitation to comment. Mr. Eames' appeal, filed on June 22, 2021 claimed that an initial decision regarding his request was not made within 10 business days of June 4, 2021. Mr. Eames' request was denied on June 24, 2021 because the request was overly broad. Mr. Eames has been provided the requested information with the email addresses redacted. Mr. Eames contends that those redactions conceal whether notice was duly sent.

CJA Rule 11-106 states that recipients hold the right to receive notice. Mr. Eames was not in the class of email recipients, therefore, Mr. Hansen believed Mr. Eames lacked standing to receive email addresses.

This appeal was first heard by this committee on August 10, 2021. Mr. Eames did not appear in protest because public notice was not published to the Public Notice Website as is



required by CJA Rule 4-202.07(5). The notice was published as required by rule and now this issue is ripe for a decision.

**Motion:** Judge May moved to deny the records access appeal filed by Mr. Eames. Judge Farr seconded the motion, and it passed unanimously.

**7. PROBATION POLICY 4.5: (Neira Siaperas)**

Neira Siaperas stated the Board of Juvenile Court Judges advanced revisions to Probation Policy 4.5.

**Section 4.5 Electronic Case Management**

This policy is a new probation policy. The purpose of this policy is to provide direction to probation officers regarding the utilization of virtual, electronic, and social media platforms in addressing the criminogenic risk and need factors of youth. The policy allows for district probation management to establish social media accounts and outlines the conditions for the management and use of these accounts.

**Motion:** Judge May moved to approve the amendments to Probation Policy 4.5, as presented, and place this on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

**8. AUDIT REPORT SECOND DISTRICT COURT: (Wayne Kidd and Tracy Chorn)**

Wayne Kidd presented the Second District Davis and Weber Counties, Farmington and Ogden Juvenile Court Final Limited Audit. This audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. Tracy Chorn, Internal Auditor, served as the lead auditor for this review. The Internal Audit Department appreciated the assistance extended by the court's staff. The audit identified accounting and operational strengths. The report included two recommendations to strengthen controls and procedures.

**Motion:** Judge May moved to approve the Second District Davis and Weber Counties, Farmington and Ogden Juvenile Court Final Limited Audit, as presented. Judge Farr seconded the motion, and it passed unanimously.

**9. AUDIT REQUEST FIRST DISTRICT COURT: (Wayne Kidd)**

Mr. Kidd requested a limited audit of the First District Juvenile Court, Box Elder County. The court has not had an internal audit since 2009. There has been a recent change in fiduciary responsibilities. The Audit Department would like to review the trust account and related areas of safeguarding assets and closeout procedures and review any issues with juror and witness payments.

**Motion:** Judge David Mortensen moved to approve the First District Juvenile Court, Box Elder County Limited Audit, as presented. Judge May seconded the motion, and it passed unanimously.

**10. APPROVAL OF AUTOMATIC EXPUNGEMENT ORDERS: (Keisa Williams)**

Keisa Williams sought three orders related to automatic expungements.

The first is a draft standing order for presiding judges. Under CJA Rule 3-108, Chief Justice Durrant may appoint a district court presiding judge as the signing judge for automatic expungements in all district courts within the presiding judge's district. Justice court presiding judges may sign for justice courts within their judicial district.

The remaining two orders are what will be auto-generated by the courts' system once programming is complete. CJA Rule 4-403 allows the electronic signature of a judge to be automatically affixed to automatic expungement orders without the need for specific direction from the assigned judge when issued using a form approved by the Judicial Council.

**Motion:** Judge May moved to approve the In Re: Automatic Expungement Standing Order, the Order on Automatic Expungement of Acquittal/Dismissal with Prejudice, and the Order on Automatic Expungement of Conviction, as presented. Judge Farr seconded the motion, and it passed unanimously.

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

Chief Justice Durrant addressed the Judicial Council agenda.

**Motion:** Judge Farr moved to approve the Judicial Council agenda, as amended to add an executive session and the Legislative Fines & Fees Audit item and move the Board of Justice Court Judges Report to the October Council meeting. Judge May seconded the motion, and it passed unanimously.

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

Judge Mortensen asked if the Judiciary would consider imposing a vaccine mandate. The committee discussed the need for a legal analysis of vaccine mandates, vaccine incentives, and human resource policy implications. Mr. Gordon explained that other Utah entities are articulating that they are imposing a vaccine mandate but not requiring emergency vaccinations. Judge Mortensen asked if vaccines are readily available. Currently, only immune compromised individuals can receive a COVID booster. Bart Olsen mentioned some courts in other states are requiring a vaccine or weekly testing. Ms. Williams will conduct research and report to the Council.

Ms. Dupont reviewed proposed changes to the Administrative Order. The Third District Court recommended allowing First Appearance Calendars in person. Another proposed change would require district and juvenile courts (not justice courts) to receive presiding judges' approval for in person hearings. Judge May approved, without motion, both changes. Judge Farr noted that requiring presiding judges' approval for in-person hearings in justice courts may open the door for more problems, noting that his court has a large number of litigants who have issues with electronic appearances.

The Plan references allowed in person hearings, whereas, the Order does not list them. Ms. Dupont will email revised documents for approval from the Management Committee and Justice Deno Himonas.

- 13. EXECUTIVE SESSION: (All)**  
An executive session was held.

- 14. ADJOURN**  
The meeting adjourned.

DRAFT

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

## Minutes

**September 16, 2021**

**Meeting held through Webex**

**12:00 p.m. – 1:05 p.m.**

**Members Present:**

Hon. Mark May, Chair

Hon. Augustus Chin

**Excused:**

Justice Deno Himonas

Hon. Kara Pettit

Michael Drechsel

Shane Bahr

Jim Peters

Neira Siaperas

**AOC Staff Present:**

Ron Gordon

Cathy Dupont

Heidi Anderson

Alisha Johnson

Bart Olsen

Nick Stiles

Karl Sweeney

Chris Talbot

**Guests:**

Sue Crismon, Office of Innovation

Dr. James Teufel, Office of Innovation

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

Judge Mark May welcomed everyone to the meeting. Due to the lack of a quorum, the minutes were not addressed.

**2. YEAR-END SPENDING REQUESTS: (Karl Sweeney, Bart Olsen, Ron Gordon, and Cathy Dupont)**

[illegible]

### FY22 Career Ladder Payments

\$243,000

One-time funds

The conversion of the Courts' incentive plans from career ladder to a court wide incentive plan includes a wind-down of career ladder in FY22 using one-time turnover savings to make one-time payments just as was done for FY21. The payments for FY21 totaled \$467,000. The estimated payment for FY22 is \$243,000 (inclusive of benefits). With these payments, all obligations under career ladder will be fulfilled.

Due to the lack of a quorum, this item will be voted on by email.

**FY22 Incentive Bonus Payments**

\$275,000 cash payments

\$90,000 retirement and employer taxes

\$365,000 total

The conversion of the court's incentive plans from career ladder to a court wide incentive plan includes a conversion to a performance-based incentive bonus plan. Under this plan all non-judicial court employees who are not in career ladder for FY22 have the opportunity to receive incentive bonus using one-time turnover savings similar to the one-time incentive bonus payments that were made in Spring FY21.

Due to the lack of a quorum, this item will be voted on by email.

**3. REQUEST FOR USE OF ONGOING SAVINGS: (Ron Gordon and Cathy Dupont)  
Funding for Performance Raises – Replacing Career Ladder**

\$450,000

Ongoing funds

Historically, career ladder has consumed \$450,000 of ongoing turnover savings each year. As part of the career ladder sunset process, for FY22, any career ladder payments are funded with one-time turnover savings as the program phases out by June 30, 2022. This shift releases the \$450,000 of ongoing turnover savings that was formerly used for career ladder to be used to fund performance raises for all non-judicial court personnel – except those who opted into career ladder this year (approx. 60 people). This shift is consistent with the plan approved by the Judicial Council in May 2021 when the career ladder sunset plan was approved.

Due to the lack of a quorum, this item will be voted on by email.

**4. AMERICAN RESCUE PLAN ACT (ARPA) REQUESTS: (Karl Sweeney)  
Electronic Access to Justice Part I FY22**

\$11M

This \$11M has been previously submitted to the legislature and was approved in the May 2021 special session. The legislature tasked the Judicial Council to ensure the requests met ARPA eligibility. After a review of the requests by AOC Finance, 3 were pulled from the original request. Replacing these items were several FY 2022 carryforward requests as well as pricing increases for IT purchases and scope changes to the original request. The items

submitted in this request comply with ARPA eligibility requirements and has been sent to GOPB for approval. This revised request now has 19 items and includes:

- a. Infrastructure to support continued use of video hearings.
- b. To develop a fully functional e-filing system for all litigants, including self-represented litigants.
- c. Create additional self-help kiosks for courthouses.
- d. A well-designed website that is easy to navigate and search.

Due to the lack of a quorum, this item will be voted on by email.

### **Electronic Access to Justice Part II FY23**

\$3.2M

Part II accompanies and completes the Part I request. Due to pricing increases on technology since the original estimate in Part I, the courts have updated the pricing on all of the requests and made a few additions/scope adjustments. Priorities # 20 through # 28 are submitted in this request. This will make the total expenditure request \$14.2M for IT Electronic Access to Justice - Response to COVID included in 2 different requests.

Due to the lack of a quorum, this item will be voted on by email.

### **Premium Pay for Essential Workers FY23**

\$1.9M

This request seeks to provide a modest amount of premium pay for essential court workers who provided the services to the public during the pandemic. Courts had to remain open and functioning during the pandemic. Payments had to be processed. Court orders issued. Hearings held. Questions answered. New virtual IT services rolled out to the Courts. Essential business only, but it went forward with the help of the court's essential workers. Further work will be done in the next few days to refine the amount based on new requirements in the Treasury's ARPA Interim Final Rule which was issued after the initial request.

Due to the lack of a quorum, this item will be voted on by email.

### **Reduction of Matheson Courthouse Parking Revenue FY23**

\$843,000

This request seeks recovery under ARPAs provision to cover reduced revenues due to COVID-19. The courts were the recipients of parking garage fees for the public parking areas below the Matheson Courthouse. Due to the in-court sessions, court patrons, visitors, witnesses and the general public used the public parking facilities. In FY20 the court's received parking garage revenues (net of amounts paid to the parking garage manager) of \$301,000. With the lack of in-person court sessions since COVID, the contract with the public parking management company was suspended. The courts reinstated the contract a few months ago, but with the resurgence of COVID due to variants, the courts terminated the contract September 2021. The courts do not see a return to profitable parking garage operations for the foreseeable future. This

request will be contingent on whether there are revenue losses between FY 2019 and FY 2020/FY 2021 by the “recipient.”

Due to the lack of a quorum, this item will be voted on by email.

**COVID-Related Supplies FY23**

\$100,000

This request seeks recovery under ARPAs provision to cover COVID supplies used by the court for patrons and employees in all areas of the courts including public areas and courtrooms. Based on the courts run rate for these type of expenses (approximately \$4,000 per month) in FY22, the forecast continued need at this same rate throughout FY22 and FY23.

Due to the lack of a quorum, this item will be voted on by email.

**Jury Trial Backlog – District/Juvenile Courts Case Backlog Part II FY23**

\$1M

Due to the effects of COVID, the courts have had difficulty conducting jury trials and hearing cases. Although the case backlog is beginning to be addressed, the courts are finding that getting the parties together including scheduling dates acceptable to attorneys on both sides is taking twice as long as anticipated and those cases that do go to trial are lasting twice as long as estimated. Therefore, the actual case backlog is taking longer to work down than estimated a few months ago when the cost required to clear backlogged cases and jury trials was estimated. Because temporary Judicial Assistants (JAs) are hired to free up the time of other JAs to devote to the case backlog and jury trials, the ongoing costs of these time-limited JAs now appear to be double what was estimated, meaning the courts expect the case backlog to take up to another full year to complete.

Due to the lack of a quorum, this item will be voted on by email.

**Office of Legal Services Innovation**

\$648,778

The COVID pandemic and the related economic crisis has accelerated and exacerbated significant challenges in the civil justice system. Even before the pandemic, the American legal system stagnated in the grips of an access to justice crisis. In roughly three-quarters of filed civil cases, one side lacks a lawyer and so must attempt to navigate the legal system alone. Utah is not exempt from the impact of this crisis. In 2019, there were over 100,000 civil cases in the Utah state court system. In many of these cases, one or both parties are without legal representation.

This item will be revised and circulated to BFMC before sending it to the Council.

**5. CREDIT CARD TRANSACTION FEES: (Karl Sweeney)**

AOC Finance has responsibility for monitoring the difference between the interest the courts earn (on trust accounts and earned surpluses retained inside the trust account1) and the credit card and other fees the courts pay from the interest received. Historically, the courts either

generated a cash surplus, or in years where the courts had general funds were going to lapse to the legislature, the courts moved general funds into the trust account to have on hand to cover future years expenses. Except for cash, each type of payment the court takes in has a cost associated with it. Payments by check and ACH have a nominal fee. Payments by credit card are the highest as there is both a per transaction (.15 cents) and a fixed percentage charged on the payment amount (“Transaction Fee”). The total Transaction Fee is 2.95%. The courts had 246,000 credit card payment transactions in FY21 for a gross amount of \$32,064,968 of funds collected through credit card payments (average \$130 per transaction). As society transitions to “cashless” the courts expect credit card fees to increase due to both increases in (1) the rate charged by credit card companies and (2) volume as more court patrons shun cash in favor of credit cards.

For the past several years, Federal Reserve actions to keep interest rates low have reduced the courts earnings by approximately two-thirds, leaving the courts in a situation where (in FY21) every month the courts trust expenses exceeded the trust revenues and the trust earned surplus shrank. If current trends continue, with available cash of \$2.2M at the end of FY21 the courts have approximately 2.5 – 3 years’ worth of cash to pay for the credit card costs before the courts must either request funding from the legislature or charge a transaction fee to offset the costs. The advantage of addressing this now is that the courts can use a portion of our earned surplus to cover the IT costs to convert to a transaction fee Court system.

Mr. Gordon explained that if the courts wish to pursue this, it could be addressed in the next legislative session.

Due to the lack of a quorum, this item will be voted on by email.

## 6. PERIOD 2 FY22 FINANCIALS AND ONE-TIME/ONGOING TURNOVER SAVINGS: (Alisha Johnson)

Alisha Johnson mentioned the courts current forecast of 1x turnover savings shows we will have \$2.5M for FY 2023 carryforward spending.



### FY 2022 Ongoing Turnover Savings - Update as of 09/13/2021

#		Funding Type	Amount
1	Carried over Ongoing Savings (from FY 2021, includes unallocated ongoing appropriation)	Internal Savings	244,454
2	Current YTD Ongoing Turnover Savings FY 2021	Internal Savings	(392,474)
	<b>TOTAL SAVINGS</b>		<b>(148,020)</b>
<b>Actual Turnover Savings for FY 2022 as of 9/13/2021</b>			<b>\$ (148,020)</b>

- Ongoing turnover savings only happens when a vacant position is filled at a lower rate and / or with lower benefits.
- There are currently 43 positions that have turned with the past 90 daysover that are currently listed as having unknown benefits. As those employees select their benefits, if they select lower benefits, there will be additional savings.
- Currently, 75.5 FTE are vacant with 36.5 in process of being filled. If those fill, with no other changes, that would leave 39 FTE vacant.
- We expect the YTD OTS to increase by approx. \$75K per month for the remaining 10 periods of FY 2022 = \$750k. When added to -\$148k in YTD savings, this will put the Courts at \$602k in ongoing turnover savings for the year.





## FY 2022 One Time Turnover Savings

Updated as of Pay Period Ending 08/20/2021 (296 out of 2088 hours)

#		Funding Type	Amount
1	One Time Turnover Savings (from actual payroll data versus budget as of PPE 8/20/2021)	Internal Savings	668,032
2	Est. One Time Savings for 1792 remaining pay hours (\$2k / pay hour)	Internal Savings (Est.)	3,584,000
	TOTAL POTENTIAL SAVINGS		4,252,032
Current Balance of One Time Savings			\$ 4,252,032

- \* Actual per hour turnover savings for the last 4 pay periods (oldest to newest) are \$2,407.50, \$2,094.50, \$2,399.33, and \$2,170.92. The average per hour turnover savings YTD is \$2,256.87. We are estimating an amount of \$2,000 per hour. As we get additional data, we will refine our estimates.

### 7. CALENDAR YEAR 2022 MEETING DATES: (Alisha Johnson)

Proposed meeting dates:

January 4 <sup>th</sup>	February 14 <sup>th</sup>	February 25 <sup>th</sup>	April 11 <sup>th</sup>
May 9 <sup>th</sup>	June 13 <sup>th</sup>	July 4 <sup>th</sup>	August 5 <sup>th</sup>
August 30 <sup>th</sup>	October 10 <sup>th</sup>	November 7 <sup>th</sup>	December 5 <sup>th</sup>

Judge May preferred to send these by email due to the lack of quorum.

### 8. GRANT COORDINATOR REPORT: (Jordan Murray)

Jordan Murray reviewed proposed changes to CJA Rule 3-411. Section 11-07 of the Accounting Manual has been updated. Mr. Murray provided an update on grants.

### 9. OLD BUSINESS/NEW BUSINESS: (All)

Judicial Operations Policy Revisions – Mr. Sweeney would like the Accounting Manual revisions to be approved by this committee through a consent calendar.

The committee held an executive session, with the understanding that a motion cannot be made due to the lack of quorum.

### 10. ADJOURN

The meeting adjourned.

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

Webex video conferencing  
August 6, 2021: 12 pm -2 pm

<b>MEMBERS:</b>	<b>PRESENT</b>	<b>EXCUSED</b>	<b>GUESTS:</b>
Judge Derek Pullan, <i>Chair</i>	•		Chris Palmer
Judge Brian Cannell	•		Ron Gordon
Judge Samuel Chiara	•		Paul Barron
Judge David Connors	•		Meredith Mannebach
Judge Michelle Heward	•		<b>STAFF:</b>
Mr. Rob Rice		•	Keisa Williams
			Minhvan Brimhall

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

Judge Connors welcomed the committee to the meeting. The committee considered the minutes from the June 6, 2021 meeting.

***Judge Chiara moved to approve the minutes as drafted, Judge Heward seconded and the motion passed unanimously.***

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

- CJA 1-205. Standing and ad hoc committees.
- CJA 3-419. Office of Fairness and Accountability.
- CJA 4-202.02. Records classification.
- CJA 4-206. Exhibits.
- CJA 4-401.02. Possession and use of electronic portable devices.

CJA 4-206:

Ms. Williams met with Mr. Rincon prior to the meeting and confirmed that his concerns were adequately resolved in the rule as written. Ms. Williams proposed one amendment in response to the public comment regarding the statutory reference. The specific reference to Title 24, Chapter 3 was removed and replaced with a general reference to the Utah Code.

***Judge Chiara moved to recommend that the Judicial Council approve rule 4-206 as final. Judge Cannell seconded and the motion passed unanimously.***

CJA 1-205:

No public comments were received. Ms. Williams recommended a minor amendment to rule 1-205 based on a request from the Board of Juvenile Court Judges. Judge Eddington was a member of the Standing Committee on Pretrial Release and Supervision when he retired. The Board recommends that the juvenile court judge member position on the Pretrial Committee be eliminated because the issues they address do not affect juvenile court matters. The committee chair, Judge Harmond, supports the request.

Judge Heward agreed. If the committee has an issue with a juvenile matter, they can reach out to the Board or a juvenile court judge for assistance.

***Judge Heward moved to recommend that the Judicial Council approve rule 1-205 as final. Judge Cannell seconded and the motion passed unanimously.***

**CJA 3-419:**

Following a discussion, the Committee determined that many of the comments challenged the policy decision to establish the Office of Fairness and Accountability. That decision was made by the Judicial Council some time ago and the Office is now operational. Policy and Planning's task was to draft a rule outlining the scope of the Office. The Committee made the following additional amendments:

- Ensured the terms "judiciary," "judicial branch," and "judicial system" were consistent throughout;
- Deleted (3)(A)(i)(d) in lines 56-57;
- Amended (3)(A)(v) in lines 90-93 to read as follows: "Collaborating with the Utah State Bar, schools, and other organizations to encourage individuals from marginalized communities to qualify and apply for judicial position;" and
- Amended (3)(E) in lines 108-110 to read as follows: "Review and report on the efficient allocation and fair application of available resources to address issues of unequal treatment within the judicial system."

***Judge Connors moved to recommend that the Judicial Council approve rule 3-419 as final. Judge Heward seconded and the motion passed unanimously.***

**CJA 4-202.02 and CJA 4-401.02:**

No comments were received and no amendments were recommended.

***Judge Heward moved to recommend that the Judicial Council approve rules 4-202.02 and 4-401.02 as final. Judge Chiara seconded and the motion passed unanimously.***

**(3) CJA 3-117. Committee on Court Forms**

**CJA 3-401. Office of General Counsel**

Ms. Williams: The proposed amendment to 3-117 would provide the State Court Administrator with the flexibility to determine how AOC staffing resources should be allocated and to assign work with various committees accordingly. The amendment would also bring the rule in line with CJA 1-205(3)(D) and 1-204(8). The amendment to rule 3-401 would apply to both the State Court Administrator and the Judicial Council.

Following a brief discussion, Judge Chiara moved to recommend the proposed amendments to rules 3-117 and 3-401 to the Judicial Council for approval for public comment. Judge Cannell seconded and the motion passed unanimously.

**(4) CJA 2-101. Rules for the conduct of Council meetings.**

**CJA 6-101. The Board of District Court Judges.**

**CJA 7-101. Juvenile Court Boards, Executive Committee and Council Representatives.**

**CJA 9-101. The Board of Justice Court Judges.**

**CJA 5-101. The Board of Appellate Court Judges.**

Ms. Williams: The proposed amendments remove the requirement that the Council and Boards follow Robert's Rules of Order in meetings. The court is not required to follow those procedures under the Open and Public Meetings Act or any other section of the Code. Robert's Rules are extremely onerous and, to my knowledge, are not followed on a regular basis.

Judge Pullan: I agree. The Judicial Council could replace Robert's Rules with general principles set forth in a separate document. The principles would not need to be incorporated in a rule.

The Committee discussed several principles:

- a quorum must be present to make substantive decisions
- decisions must be made by motion
- there must be a second and an opportunity for a discussion on the motion
- a motion may be amended
- a motion must be passed by a majority of the members present

After further discussion, Judge Heward moved to send the proposed amendments to rules 2-101, 6-101, 7-101, 9-101, and 5-101 to the Judicial Council for approval for public comment. Judge Chiara seconded and the motion passed unanimously.

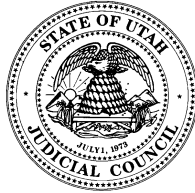
**(5) Old Business/New Business.**

Judge Pullan: Mr. Murray and Mr. Sweeney will present the revised grant guidelines in September and will be reaching out to individual members of Policy and Planning for feedback prior to the meeting. I would encourage each of you to make time for those individual meetings so that we have a good idea of the real policy issues when the Committee reconvenes in September. This is a high priority of the Council.

**Adjourn:**

With no further items for discussion, Judge Chiara moved to adjourn the meeting. With no second or opposition, the meeting adjourned at 1:30 pm. The next meeting will be on September 3, 2021 at 12 PM via Webex video conferencing.

# Tab 3



## Administrative Office of the Courts

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

September 2, 2021

**Ronald B. Gordon, Jr.**  
State Court Administrator  
**Catherine J. Dupont**  
Deputy Court Administrator

### MEMORANDUM

**TO: Management Committee**

**FROM: Judicial Education Branch Committee**  
**Judge Diana Hagen, Chair**  
**Lauren Andersen, Staff, Judicial Institute Director**

**RE: Judicial Branch Education Committee performance review**

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As per CJA Rule 1-205(1)(D), the Judicial Branch Education Committee is due for its performance review.

Attached is an Annual Report summarizing of our FY21 Performance. If the Management Committee determines that the committee continues to serve its purpose, we request that the Management Committee recommend to the Judicial Council that the committee continue.

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



# STANDING EDUCATION COMMITTEE'S

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# 2020-21 ANNUAL REPORT

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TO THE JUDICIAL COUNCIL

# OUR PERFORMANCE

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2020-2021 saw major changes for the Education department. We introduced new tools, new people and increased our services during the pandemic. Here are some key performance metrics for our department:

- Over 4825 enrollments in employee courses
- 79% of those enrollments received credit
- Launched a new Learning Management System (LMS) to 1800 court employees. 1785 of those users are active.
- Hosted five virtual judicial conferences, four New Judge Orientations, one New Employee Conference and one Justice Court Clerk Conference.



## OUR PEOPLE

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Our people changed as our methods of education changed. In August 2020, we brought in Kimberlee Zimmerman as the Justice Court Education Coordinator. She develops education programs for justice court clerks and supports continuing education needs for judges and justice court employees. In May 2021, Libby Wadley moved from the position of Online Training Specialist to the Learning Management System Administrator, making her responsible for the day-to-day technical and operational support of our Learning Management System (LMS). We also welcomed a new Director, Lauren Andersen, in January 2021 after the retirement of the long serving Director Tom Langhorne. In addition, we explored the idea of creating a position that focuses on curriculum development for all benches in the judiciary.

## OUR TOOLS

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COVID-19 required the Education department to rethink how educational content could be delivered. The department did this by utilizing tools that allowed employees to learn outside of the classroom. Our tools include:

- The Learning Management System (LMS) that allows all judicial employees to access asynchronous courses that are (a) pre-recorded and (b) gamified.
- OpenSesame's 25+ program that places asynchronous training into our LMS. OpenSesame courses are offered in addition to Career Track trainings and available to all court employees.
- Proof of Training certifications in the LMS for Annual Court Security, PCI, Court Security Awareness (Justice Courts), Electronic Mail Retention.
- Webex Meetings, Events and Trainings to deliver all live courses and seminars and all virtual conferences and summits.



The OpenSesame 25+ has been used on a trial basis since May 2021. The service allows the Education department to access 25 unique courses every six months. In the first 10 weeks of its implementation 126 court employees enrolled in OpenSesame courses. Each of those court employees took an average of 2.66 OpenSesame courses.

Top courses include:

- Asking Essential Questions
- Burnout Protection
- Dealing with Stress
- Working from Home: Strategies for Remote Employees
- Change Management 101
- Emotional Intelligence

OpenSesame courses were not assigned or part of Career Track requirements. Enrollments allow Education to observe what court employees are interested in learning.

## OUR SERVICE

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Despite the challenges of moving all learning online and welcoming a new director, Education was able to fulfill its mission of providing a comprehensive education program based in the principles of adult education and focused on participative learning. We did this by collaborating with partners and building new access points to education. Investments in Webex training, the LMS, and instructional design training for all Education staff allowed us to reach every employee with internet access and a computer/mobile device. These tools also allowed us to partner with other departments in the judiciary to offer additional training on tools, policy changes and program updates.

Trainings completed in collaboration with other court departments include:

- SurveyMonkey, MyCase and CARE release trainings with IT
- HR Policy and Compensation Policy updates with HR
- Virtual Jury Selection asynchronous training
- Court Improvement Program (CIP) webinars

# PARTICIPATION IN NATIONAL JUDICIAL EDUCATION INITIATIVES

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The Education department has a long tradition of participating in the National Association of Judicial Educators. In 2020-2021 we were able to expand our contributions to other national organizations like the National Association of Court Administrators (NACM), National Courts and Sciences Institute (NCSI) and the National Center for State Courts (NCSC). Education contributed to these organizations by:

- Serving on NACM's Governance Committee, Operations Manual Committee and the Education Committee
- Working with 15 other states and the NCSI to create a Judges' Bench Book discussing Issues Surrounding & Claims Arising From COVID-19. Utah's Bench Book was selected by the NCSI to serve as a model for other participating states.
- Participating in the NCSC's Response to Mental Illness and recommending content for the NCSC Behavioral Health hub.

## JUDICIAL EDUCATION SCHOLARSHIPS

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Not every judicial education offering can be provided by the Education department. While travel was limited in FY21, several judges applied for scholarships to attend virtual trainings, summits and mini-courses. In FY21 Education's scholarships helped train judges in areas of expert testimony, judicial writing and working with combative parties to achieve resolution. Judges receiving these scholarships have been encouraged to lead conference breakout sessions or district trainings to share what they have learned with their peers.

# COURSE ENROLLMENTS

## (BY SUBJECT)

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Course	Enrollment	Credit	% Receiving Credit
New Employee Orientation Overview	102	72	71%
New Employee Orientation	173	173	100%
Customer Service	189	150	79%
Group Dynamics	210	121	58%
Dealing with Difficult Conversations	156	96	62%
Coaching	107	92	86%
Emotional Intelligence	200	105	53%
Role of Probation	18	15	83%
Motivational Interviewing 101	62	52	84%
Motivational Interviewing 102	13	12	92%
Case Planning	20	15	75%
Case Planning for DPO's	13	12	92%
Targeted response	36	31	86%
Juvenile Justice Mental Health	68	55	81%
Juvenile Substance Abuse	47	41	87%
Implicit Bias	19	13	68%
Juvenile Brain Development	60	52	87%
Safety Training 2	12	12	100%
Due Process/Constitutional Law	15	13	87%
Working with Youth with Problematic Sexual Behavior	11	11	100%
Victim Issues	21	18	86%
Navigating Through Resistance	19	18	95%
Ethics	137	120	88%
Your New Life as a Supervisor	83	60	72%
DV 101	100	64	64%
DV 102	79	52	66%
Trauma Informed Care	59	46	78%
Real Colors	46	31	67%
Homicide and Death Penalty	96	82	85%
Efficient Court Minutes	149	114	77%
Suicide Prevention (QPR)	139	105	76%
Human Trafficking	224	184	82%
Dating Violence Among Teenagers and what to do with it	106	90	85%
Self Care	40	24	60%
Resilience	26	16	62%
LGBTQIA	51	47	92%
Expectations, Delegation and Feedback	25	19	76%
Building Teams of Trust and Collaboration	25	18	72%
Communicating with People and Teams	25	20	80%
Jabber	117	87	74%
SurveyMonkey	173	162	94%
MyCase/JAQ	291	205	70%
Juvenile Court Programming Release	226	180	80%
Justice Court Programming Release	326	232	71%
Juvenile Court CPO	137	86	63%
Introduction to Online Dispute Resolution	159	154	97%
ODR Facilitators and the Role they Play	143	142	99%
ODR Case Disposition and Dismissal Management	140	140	100%
ODR Case Initiation and Exemptions	136	136	100%
<b>TOTAL</b>	<b>4829</b>	<b>3795</b>	<b>79%</b>

# THANK YOU STANDING EDUCATION COMMITTEE

The Standing Education Committee provided guidance and important feedback as the Education Department considered different tools, policies and methods of content delivery during the past year. Thank you for your service!

**Judge Diana Hagen**

Chair, Utah Court of Appeals

**Judge Matthew D. Bates**

Third District Court

**Cathy Dupont**

Deputy State Court Administrator, Administrative Office of the Courts

**Megan Haney**

Chief Probation Officer, Third District Juvenile Court

**Judge George Harmond**

Seventh District Court

**Professor James Hedges**

Director of Innovative Learning and Adult Continuing Education, Westminster College

**Melissa Kennedy**

Clerk of Court, Third District Juvenile Court

**John Larsen**

Program Manager, Administrative Office of the Courts

**Judge Kirk Morgan**

First District Juvenile Court

**Bart Olsen**

Human Resources Director, Administrative Office of the Courts

**Joyce Pace**

Trial Court Executive, Fifth District Court

**Mark Paradise**

Judicial Case Manager, Third District Court

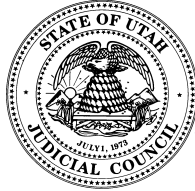
**Judge J.C. Ynchausti**

Davis County Justice Court, Education liaison of the Board of Justice Court Judges

**Lauren Andersen**

Staff, Judicial Institute Director, Administrative Office of the Courts

# Tab 4



## Administrative Office of the Courts

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

September 7, 2021

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

### MEMORANDUM

**TO: Management Committee / Judicial Council**  
**FROM: Keisa Williams**  
**RE: Rules for Final Approval**

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Following a 45-day comment period, Policy and Planning recommends that the following rules be approved as final with a November 1, 2021 effective date.

#### **CJA 1-205. Standing and ad hoc committees (AMEND)**

The proposed amendments (lines 159-179) change the Standing Committee on Pretrial Release and Supervision membership as follows:

- Removes the insurance department representative (at the request of the deputy insurance commissioner);
- Removes the juvenile judge position (at the request of the Board of Juvenile Court Judges);
- Adds a chief of police;
- Adds a representative from the Utah Victims' Council; and
- Adds a representative from a local community organization active in the pretrial arena.

#### **CJA 3-415. Auditing (AMEND)**

The proposed amendments more clearly define the types of audits conducted by the Audit Department, clarify audit procedures, and identify the individuals involved at critical points.

#### **CJA 3-419. Office of Fairness and Accountability (NEW)**

Identifies the objectives of the Office of Fairness and Accountability and the duties of the Director of the Office of Fairness and Accountability.

Many of the public comments (attached) challenged the policy decision to establish the Office. Policy and Planning's task was to draft a rule outlining the scope of the Office's work. Following the comment period, the Committee made the following additional amendments:

- Ensured the terms "judiciary," "judicial branch," and "judicial system" were consistent throughout;
- Deleted (3)(A)(i)(d) in lines 56-57;
- Amended (3)(A)(v) in lines 90-93; and

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

- Amended (3)(E) in lines 108-110.

**CJA 4-206. Exhibits (AMEND)**

The rule underwent a significant revision following a 2019 audit. The proposed amendments address custody, disposal, and storage of physical and electronic evidence. This rule has been thoroughly vetted by the boards and clerks of court.

**CJA 4-401.02 Possession and use of portable electronic devices (AMEND)**

The proposed amendments (lines 30-34) allow JPEC to continue to use recordings to evaluate the performance of justice court judges subject to a basic evaluation.

**CJA 7-302. Court reports prepared for delinquency cases (AMEND)**

The Sentencing Commission released a new Juvenile Disposition Guide that does not provide specific recommendations for disposition, only factors that should be considered. The proposed amendments align the rule with the statute regarding probation's role in victim restitution (78A-6-117(j)(ix-x)) and the new Juvenile Disposition Guidelines.

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

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

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

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

**Applicability:**

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

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

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

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

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

(1)(B)(i) The **Technology Committee** shall consist of:

- (1)(B)(i)(a) one judge from each court of record;
- (1)(B)(i)(b) one justice court judge;



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

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

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

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

- (1)(B)(vi)(a) one Senator appointed by the President of the Senate;
- (1)(B)(vi)(b) the Director of the Department of Human Services or designee;
- (1)(B)(vi)(c) one attorney of the Executive Committee of the Family Law Section of the Utah State Bar;
- (1)(B)(vi)(d) one attorney with experience in abuse, neglect and dependency cases;
- (1)(B)(vi)(e) one attorney with experience representing parents in abuse, neglect and dependency cases;
- (1)(B)(vi)(f) one representative of a child advocacy organization;
- (1)(B)(vi)(g) the ADR Program Director or designee;
- (1)(B)(vi)(h) one professional in the area of child development;
- (1)(B)(vi)(i) one mental health professional;
- (1)(B)(vi)(j) one representative of the community;
- (1)(B)(vi)(k) the Director of the Office of Guardian ad Litem or designee;
- (1)(B)(vi)(l) one court commissioner;
- (1)(B)(vi)(m) two district court judges; and
- (1)(B)(vi)(n) two juvenile court judges.
- (1)(B)(vi)(o) One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The **Committee on Judicial Outreach** shall consist of:

- (1)(B)(vii)(a) one appellate court judge;
- (1)(B)(vii)(b) one district court judge;
- (1)(B)(vii)(c) one juvenile court judge;

(1)(B)(vii)(d) one justice court judge; one state level administrator;  
(1)(B)(vii)(e) a state level judicial education representative;  
(1)(B)(vii)(f) one court executive;  
(1)(B)(vii)(g) one Utah State Bar representative;  
(1)(B)(vii)(h) one communication representative;  
(1)(B)(vii)(i) one law library representative;  
(1)(B)(vii)(j) one civic community representative; and  
(1)(B)(vii)(k) one state education representative.  
(1)(B)(vii)(l) Chairs of the Judicial Outreach Committee's subcommittees  
shall also serve as members of the committee.

(1)(B)(viii) The **Committee on Resources for Self-represented Parties** shall  
consist of:

(1)(B)(viii)(a) two district court judges;  
(1)(B)(viii)(b) one juvenile court judge;  
(1)(B)(viii)(c) two justice court judges;  
(1)(B)(viii)(d) three clerks of court – one from an appellate court, one from an  
urban district and one from a rural district;  
(1)(B)(viii)(e) one representative from the Self-Help Center;  
(1)(B)(viii)(f) one representative from the Utah State Bar;  
(1)(B)(viii)(g) two representatives from legal service organizations that serve  
low-income clients;  
(1)(B)(viii)(h) one private attorney experienced in providing services to self-  
represented parties;  
(1)(B)(viii)(i) two law school representatives;  
(1)(B)(viii)(j) the state law librarian; and  
(1)(B)(viii)(k) two community representatives.

(1)(B)(ix) The **Language Access Committee** shall consist of:

(1)(B)(ix)(a) one district court judge;  
(1)(B)(ix)(b) one juvenile court judge;  
(1)(B)(ix)(c) one justice court judge;  
(1)(B)(ix)(d) one trial court executive;  
(1)(B)(ix)(e) one court clerk;  
(1)(B)(ix)(f) one interpreter coordinator;  
(1)(B)(ix)(g) one probation officer;

- (1)(B)(ix)(h) one prosecuting attorney;
- (1)(B)(ix)(i) one defense attorney;
- (1)(B)(ix)(j) two certified interpreters;
- (1)(B)(ix)(k) one approved interpreter;
- (1)(B)(ix)(l) one expert in the field of linguistics; and
- (1)(B)(ix)(m) one American Sign Language representative.
- (1)(B)(x) The **Guardian ad Litem Oversight Committee** shall consist of:
- (1)(B)(x)(a) seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.
- (1)(B)(xi) The **Committee on Model Utah Civil Jury Instructions** shall consist of:
- (1)(B)(xi)(a) two district court judges;
- (1)(B)(xi)(b) four lawyers who primarily represent plaintiffs;
- (1)(B)(xi)(c) four lawyers who primarily represent defendants; and
- (1)(B)(xi)(d) one person skilled in linguistics or communication.
- (1)(B)(xii) The **Committee on Model Utah Criminal Jury Instructions** shall consist of:
- (1)(B)(xii)(a) two district court judges;
- (1)(B)(xii)(b) one justice court judge;
- (1)(B)(xii)(c) four prosecutors;
- (1)(B)(xii)(d) four defense counsel;
- (1)(B)(xii)(e) one professor of criminal law; and
- (1)(B)(xii)(f) one person skilled in linguistics or communication.
- (1)(B)(xiii) The **Committee on Pretrial Release and Supervision** shall consist of:
- (1)(B)(xiii)(a) two district court judges;
- ~~(1)(B)(xiii)(b) one juvenile court judge;~~
- ~~(1)(B)(xiii)(c)~~ (1)(B)(xiii)(b) two justice court judges;
- ~~(1)(B)(xiii)(d)~~ (1)(B)(xiii)(c) one prosecutor;
- ~~(1)(B)(xiii)(e)~~ (1)(B)(xiii)(d) one defense attorney;
- ~~(1)(B)(xiii)(f)~~ (1)(B)(xiii)(e) one county sheriff;
- ~~(1)(B)(xiii)(g)~~ (1)(B)(xiii)(f) one representative of counties;
- ~~(1)(B)(xiii)(h)~~ (1)(B)(xiii)(g) one representative of a county pretrial services agency;
- ~~(1)(B)(xiii)(i) one representative of the Utah Insurance Department;~~

~~(1)(B)(xiii)(j)~~ (1)(B)(xiii)(h) one representative of the Utah Commission on  
Criminal and Juvenile Justice;

~~(1)(B)(xiii)(k)~~ (1)(B)(xiii)(i) one commercial surety agent;

~~(1)(B)(xiii)(l)~~ (1)(B)(xiii)(j) one state senator;

~~(1)(B)(xiii)(m)~~ (1)(B)(xiii)(k) one state representative;

~~(1)(B)(xiii)(n)~~ (1)(B)(xiii)(l) the Director of the Indigent Defense  
Commission or designee;

(1)(B)(xiii)(m) one representative of the Utah Victims' Council;

(1)(B)(xiii)(n) one representative of a community organization actively  
engaged in pretrial justice issues;

(1)(B)(xiii)(o) one chief of police; and

(1)(B)(xiii)(p) the court's general counsel or designee.

(1)(B)(xiv) The **Committee on Court Forms** shall consist of:

(1)(B)(xiv)(a) one district court judge;

(1)(B)(xiv)(b) one court commissioner;

(1)(B)(xiv)(c) one juvenile court judge;

(1)(B)(xiv)(d) one justice court judge;

(1)(B)(xiv)(e) one court clerk;

(1)(B)(xiv)(f) one appellate court staff attorney;

(1)(B)(xiv)(g) one representative from the Self-Help Center;

(1)(B)(xiv)(h) the State Law Librarian;

(1)(B)(xiv)(i) the Court Services Director;

(1)(B)(xiv)(j) one representative from a legal service organization that  
serves low-income clients;

(1)(B)(xiv)(k) one paralegal;

(1)(B)(xiv)(l) one educator from a paralegal program or law school;

(1)(B)(xiv)(m) one person skilled in linguistics or communication; and

(1)(B)(xiv)(n) one representative from the Utah State Bar.

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

and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

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

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

(2) **Ad hoc committees.** The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) **General provisions.**

(3)(A) **Appointment process.**

(3)(A)(i) **Administrator's responsibilities.** The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective

236 reappointee's service on the committee, the attendance record of  
237 the prospective reappointee, the prospective reappointee's  
238 contributions to the committee, and the prospective reappointee's  
239 other present and past committee assignments; and

240 (3)(A)(i)(d) present a list of prospective appointees and reappointees to the  
241 Council and report on recommendations received regarding the  
242 appointment of members and chairs.

243 (3)(A)(ii) **Council's responsibilities.** The Council shall appoint the chair of each  
244 committee. Whenever practical, appointments shall reflect geographical,  
245 gender, cultural and ethnic diversity.

246 (3)(B) **Terms.** Except as otherwise provided in this rule, standing committee members  
247 shall serve staggered three year terms. Standing committee members shall not  
248 serve more than two consecutive terms on a committee unless the Council  
249 determines that exceptional circumstances exist which justify service of more than  
250 two consecutive terms.

251 (3)(C) **Expenses.** Members of standing and ad hoc committees may receive  
252 reimbursement for actual and necessary expenses incurred in the execution of their  
253 duties as committee members.

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

256 *Effective November 1, 2021*

**Rule 3-415. Auditing.****Intent:**

To establish an internal ~~fiscal~~ audit program for the judiciary within the administrative office.

To examine and evaluate court operations by measuring and evaluating the effectiveness and proper application of programs.

**Applicability:**

This rule shall apply to all courts and the administrative office.

**Statement of the Rule:****(1) ~~Schedule of audits.~~ Audit planning.**

~~(1)(A) Periodic.~~ **Audit planning schedule.** ~~Not less than annually, T~~ the audit director shall annually prepare a plan of scheduled fiscal and ~~program~~ performance audits for submission to and approval by the Council Management Committee. ~~The Board of Justice Court Judges shall provide the audit manager a recommendation of the courts not of record to be included in the annual audit schedule submitted to the Council Management Committee.~~

~~(B) Amendment to schedule. Any modification or change to the approved plan of scheduled audits shall require prior approval by the Council Management Committee.~~

~~(C) Special audits. Requests for special audits not included in the plan shall be submitted in writing to the Council Management Committee and identify the circumstances and need for a special unscheduled audit.~~

**(1)(B) Audit recommendations.** The Board of Appellate Court Judges, the Board of District Court Judges, the Board of Juvenile Court Judges, and the Board of Justice Court Judges may provide the audit director recommendations to be included in the audit plan submitted to the Council Management Committee.

~~(1)(C)(D) Limited audits.~~ **State court administrator authorization.** The state court administrator may authorize a limited scope audit in the event of a reported theft, burglary, or other alleged criminal act or suspected loss of monies or property at a court location, or if a change occurs in the personnel responsible for fiduciary duties ~~the state court administrator may authorize a limited audit.~~

**(1)(D) Amendment to the audit plan schedule.** Any modification or change to the approved plan of scheduled audits shall require prior approval by the Council Management Committee. Requests for audits not included in the plan shall be submitted in writing to the Council Management Committee and identify the need for an unscheduled audit to be included in the plan.

**(2) Authority.** ~~The audit manager shall be independent of the activities audited. The audit manager auditors shall have the authority to conduct audits, consultations, and other engagements in accordance to generally accepted audit principles. The auditors shall be independent of the activities audited, and shall follow generally accepted accounting and performance audit principles for conducting internal audits. The auditors shall have full and unrestricted access to all records, documents, personnel and physical properties determined relevant to the performance of an audit. The auditor~~ managers shall have the



full cooperation and assistance of court personnel in the performance of an audit. ~~The audit manager shall follow generally accepted accounting and performance audit principles for conducting internal audits.~~

(3) **Fiscal audits.** Fiscal audits may consist of one or more of the following objectives:

(3)(A) to verify the accuracy and reliability of financial records;

(3)(B) to assess compliance with ~~management~~ fiscal policies, ~~plans~~, procedures, and ~~best practices~~; regulations;

(3)(C) to assess compliance with applicable laws and rules; and

~~(D) to evaluate the efficient and effective use of judicial resources;~~

(3)(DE) to verify the appropriate protection of judicial assets.

~~(4) Short audits. When a short audit is required or approved, the audit will be conducted without prior notice. The audit shall consist of a one-time reconciliation of current cash and receipts and an observation of fiscal management procedures unless otherwise directed by the State Court Administrator or Management Committee. A written report shall be prepared and exit conference conducted. Performance audits. Performance auditing is an assessment that provides an objective evaluation about the performance of court operations. Court operations includes any program, activity, project, function, or policy that has an identifiable purpose or set of objectives. Performance audits may contain one or more the following objectives:~~

~~(4)(A) to assess the performance and management of court operations against objective criteria;~~

~~(4)(B) to determine how efficiently court operations manage resources;~~

~~(4)(C) to determine how effectively court operations accomplish goals and objectives;~~

~~(4)(D) to assess internal controls and compliance with laws, rules, policies, and best practices;~~

~~(4)(E) to provide information and recommendations to improve court operations.~~

~~(5) Audit process. An audit within the judicial branch may consist of a fiscal audit, a performance audit, or elements of both types of audits. Full audits. When a full audit is required or approved, the audit shall be conducted with prior notice.~~

~~(5)(A) An entrance conference shall be conducted between:~~

~~(5)(A)(1) Courts of record: the auditors, court executive, presiding judge, clerk of court, and state level administrator.~~

~~(5)(A)(2) Courts not of record: the auditors, justice court judge, a local government representative, and state level administrator. The presiding judge may also be invited to attend.~~

~~(5)(A)(3) Administrative offices: the auditors, state court administrator, deputy court administrator, and department director.~~

~~The audit shall be conducted at the convenience of the court.~~

(5)(B) An exit conference shall be conducted at the conclusion of the audit. This conference shall include the same individuals attending the entrance conference for both courts of record, courts not of record, and administrative offices. At the exit conference, the auditors shall review the audit findings and recommendations and provide recognition for commendable court operations, when appropriate.

(5)(C) Audit results will be communicated to and approved by the Council Management Committee.

~~(6) Performance audits. During the course of conducting a short or full fiscal audit, the audit manager shall observe and review compliance with programs and procedures established by state law and this Code and make written findings and recommendations to be incorporated in the final report. The performance audit shall include an evaluation of the adequacy, effectiveness and efficiency of court operations and management. Objectivity shall be employed by the auditors at all times. Proper recognition shall be given to commendable court operations when appropriate.~~

**(6) Audit reports.**

(6)(A) The audit ~~manager-director~~ shall prepare a written report containing findings and recommendations as a result of the audit. A draft copy of the report shall be provided ~~in advance~~ prior to the exit conference and presented to:

(6)(A)(1) Court of record: court executive, presiding judge, clerk of court, and state level administrator ~~at the exit conference~~. An opportunity for written response or comment will be afforded the court executive and presiding judge, which will be incorporated into and become part of the final report.

(6)(A)(2) Courts not of record: the presiding judge, justice court judge, and state level administrator ~~at the exit conference~~. If the court and local government are following Accounting Model 2, then a local government representative will receive a draft copy of the sections of the report that pertain to the local government, who receipt and deposit court collected funds. An opportunity for written response or comment will be afforded the justice court judge, and a local government representative if Accounting Model 2 is being followed, which will be incorporated into and become part of the final report.

(6)(A)(3) Administrative offices: state court administrator, deputy court administrator, and department director.

Written responses or comments to reports presented under paragraph (6)(A) shall be provided to the audit director within 30 days.

(6)(B) Copies of the final report shall be provided to:

(6)(B)(1) Courts of record: the Council Management Committee, appropriate Board of Judges, state court administrator, presiding judge, court executive, and state level administrator.

(6)(B)(2) Courts not of record: the Council Management Committee, state court administrator, presiding judge, justice court judge, ~~a local government representative~~, state level administrator, and the Board of Justice Court Judges. A local government representative will receive the sections of the final report that pertain to the local government, if Accounting Model 2 is being followed.

(6)(B)(3) Administrative offices: the Council Management Committee, state court administrator, deputy court administrator, and department director.

**(7) Follow-up review.**

**(7)(A) Courts of record:** Within 12 months of ~~short or full~~ audit, the audit ~~manager~~ director shall provide a Follow-up Review form, including only non-compliance audit findings, to the court executive and copy the court level administrator. The court executive will complete the Follow-up Review form reporting on progress made toward compliance and return a copy of the completed~~the~~ form within 30 days to the audit ~~manager~~ director and ~~copy the~~ court level administrator, the presiding judge, and the appropriate board of judges.

**(7)(B) Courts not of record:** Within 12 months of ~~a short or full~~ audit, the audit ~~manager~~ director shall provide a Follow-up Review form, including only non-compliance audit findings, to the justice court judge and a copy to the state level administrator. The justice court judge will complete the Follow-up Review form reporting on progress made toward compliance and return a copy of the completed form within 30 days to the audit ~~manager~~ director, the state level administrator, the presiding judge, and the Board of Justice Court Judges.

**(7)(C) Administrative offices:** Within 12 months of an audit, the audit director shall provide a Follow-up Review form, including only non-compliance audit findings, to the department director and a copy to the state court administrator. The department director will complete the Follow-up Review form reporting on the progress made toward compliance and return a copy of the completed form within 30 days to the audit director and the state court administrator.

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

**Rule 3-419. Office of Fairness and Accountability****Intent:**

To establish the Office of Fairness and Accountability within the Administrative Office of the Courts.

To identify the objectives of the Office of Fairness and Accountability.

To identify the duties of the Director of the Office of Fairness and Accountability.

**Applicability:**

This rule shall apply to the ~~judiciary~~judicial branch.

**Statement of the Rule:**

(1) **Establishment of the Office.** The Office of Fairness and Accountability is established within the Administrative Office of the Courts to organize and lead the ~~judicial~~branch in examining and addressing processes and outcomes within the ~~judicial~~system ~~branch~~ that contribute to or cause the unequal treatment of individuals based on factors such as race, gender, ethnicity, age, disability, socioeconomic status, religion, sexual orientation, marital status, veteran status, and any other status protected by law~~race, ethnicity, sexual orientation, or gender~~.

**(2) Objectives.**

(2)(A) The Office shall support the ~~judicial~~branch in its efforts to ensure that Utah courts are achieving the ~~judicial~~branch's mission to provide an open, fair, efficient, and independent system to advance access to justice under the law.

(2)(B) The Office shall work collaboratively with other offices, departments, judges, commissioners, court employees, boards of judges, and Judicial Council standing committees.

(2)(C) The Office shall advance efforts to eliminate bias from court operations, promote equal access to the courts, support efforts to diversify the bar and bench, and inspire a high level of trust and public confidence in the ~~j~~udicial branch.

**(3) Director Duties.** The Director of the Office of Fairness and Accountability shall:

(3)(A) Create and operationalize a strategic plan that includes the following areas of focus:

(3)(A)(i) Identifying and addressing racism and other forms of bias within the ~~judicial~~justice system by:

(3)(A)(i)(a) Engaging in community outreach and serving as a liaison between the courts and other agencies and organizations;

(3)(A)(i)(b) Networking with community partners such as the Utah Commission on Criminal and Juvenile Justice, the Utah Center for Legal Inclusion, Diversity Offices, universities, and community organizations; and

(3)(A)(i)(c) Partnering on access to justice initiatives and projects; ~~and~~

~~(3)(A)(i)(d) Developing a speakers' bureau to reach K-12 schools statewide.~~

(3)(A)(ii) Conducting data collection and research through:

(3)(A)(ii)(a) Collaboration with national experts and thought leaders to identify, gather and analyze relevant data; and

(3)(A)(ii)(b) Coordination with Court Data Services and Information Technology Services to capture and report relevant data.

(3)(A)(ii)(c) ~~A special area of focus shall be collecting and analyzing~~ Collection and analysis of jury information, including juror selection, service, and pools.

(3)(A)(iii) Coordinating with ~~the Utah the~~ Judicial Education Department ~~Institute~~ to develop education curriculum and training for judicial officers and employees on issues including but not limited to:

(3)(A)(iii)(a) cultural competency;

(3)(A)(iii)(b) racial bias, implicit bias, institutional bias, and individual biases; and

(3)(A)(iii)(c) any other relevant issues.

(3)(A)(iv) Monitoring Human Resources implementation of best practices for recruitment and retention, and collaborating with Human Resources on:

(3)(A)(iv)(a) the recruitment and selection of court commissioners and employees; and

(3)(A)(iv)(b) obtaining and analyzing data.

(3)(A)(v) Collaborating with ~~organizations such as~~ the Utah State Bar, schools, and other organizations ~~Utah Center for Legal Inclusion, and schools~~ to encourage individuals from marginalized communities to qualify and apply for judicial ~~openings~~positions.

(3)(B) Serve as a resource for persons in historically marginalized communities~~for minorities~~ within the ~~court~~justice system and work to increase cultural awareness, foster greater appreciation of racial and cultural diversity, and engender mutual respect in persons who deliver court services and represent our justice system

(3)(C) Make recommendations for improvement in court processes, procedures, and policies as they relate to race, gender, ethnicity, age, disability, socioeconomic status, religion, sexual orientation, marital status, veteran status, and any other status protected by law.

(3)(D) Oversee the interpreter and language access programs, ~~and the~~ communication and public information programs, and judicial outreach programs.

(3)(E) Review and report on the efficient allocation and fair application of available resources to address~~ing~~ issues of disparity-unequal treatment within the judiciarythe judicial system.

(3)(F) Implement standards, policies, and rules as directed by the State Court Administrator and Judicial Council.

(3)(G) Report to the Judicial Council at least annually.

(4) The Director shall provide support to any committee or task force created by the Judicial Council for the purpose of developing a strategic plan for the Office.

*Effective November 1, 2021*

# 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.”

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Posted: June 2, 2021

## Utah Courts



### Code of Judicial Administration – Comment Period Closed July 17, 2021

#### **CJA01-0205. Standing and ad hoc committees**

(AMEND). Amends membership on the Standing Committee on Pretrial Release and Supervision.

#### **CJA03-0419. Office of Fairness and Accountability**

(NEW). Establishes the Office of Fairness and Accountability, and identifies the duties of the Director and the objectives of the Office.

**CJA04-0202.02. Records classification (AMEND).** Clarifies that minors’ names are only public in criminal cases if the minor is a party. This is not a change, the language is simply intended to clear up confusion on the issue.

**CJA04-0206. Exhibits (AMEND).** Significantly bolsters uniform procedures for the marking, receipt, maintenance, and release of exhibits. Provides courts with the discretion to extend applicability to any proceeding in which exhibits are introduced.

**CJA04-0401.02. Possession and use of portable electronic devices (AMEND).** Allows JPEC continued use of recordings to evaluate the performance of justice court judges subject to a basic evaluation.

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](#)



This entry was posted in [-Code of Judicial Administration](#), [-Code of Judicial Administration](#), [CJA01-0205](#), [CJA03-0419](#), [CJA04-0202.02](#), [CJA04-0206](#), [CJA04-0401.02](#).

« [Rules of Evidence – Comment Period Closed July 22, 2021](#)

[Code of Judicial Administration – Comment Period Closed July 17, 2021](#) »

## UTAH COURTS

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14 thoughts on “[Code of Judicial Administration – Comment Period Closed July 17, 2021](#)”

**Daniel**  
June 2, 2021 at 3:11 pm

In Rule 3-419. Office of Fairness and Accountability  
Line 103, perhaps eliminate the word “and” which appears right before “the communication”

**Carob**  
June 2, 2021 at 3:21 pm

You have a choice to stand for the Dream that Martin Luther king Jr. and so many others fought so hard for. Or to take a knee for the unsustainable identity politics crowd. A crowd with a heirarchy that many of us don't fit into. Including myself a former foster child and a person of color. We are faced with defining diversity as simply a color or a gender of defining it based as individuals who ALL have something to bring to the table. It's a slippery slope embracing identity politics, and many who think “if I put my head down, and shut up will find they aren't. Do we really want separate graduation ceremonies by gender and race? What does that do to the mixed race children? Making them choose their oppressed side is teaching them to hate themselves. We had

- [-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](#)
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- [Appendix B](#)
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- [CJA Appendix F](#)
- [CJA01-0201](#)
- [CJA01-0204](#)
- [CJA01-0205](#)
- [CJA01-0205](#)
- [CJA01-0303](#)
- [CJA01-0304](#)
- [CJA01-0305](#)
- [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](#)
- [CJA02-0211](#)
- [CJA02-0212](#)
- [CJA03-0101](#)
- [CJA03-0102](#)
- [CJA03-0103](#)
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- [CJA03-0108](#)
- [CJA03-0109](#)
- [CJA03-0111](#)
- [CJA03-0111.01](#)
- [CJA03-0111.02](#)
- [CJA03-0111.03](#)
- [CJA03-0111.04](#)
- [CJA03-0111.05](#)

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progressed beyond this. If we are to END the very real systemic racism CRT is not the way to do it! People are not a monolith and should not be encouraged to be tribal. This shouldn't be political, I'm surprised at how many people in public office seem to hate america and it's values. Our country is not perfect, by why would the corrupt ideas, teaching people they are victims, or they are inherently oppressive make it better. When I was a foster child in school, my teachers let me slip through the cracks, my social workers had very low expectations for me, because they are brainwashed by the bigotry of low expectations. That's what this bill does. It's not a conspiracy, one only needs to look at UC Davis who just segregated graduations. Or Washington states Evergreen College, who 5 year after deeply immersing itself in critical theory, is having a tough time hiring a dean. I get that Utahns want to be nice, that the LDS has a complicated racial history. But do you want to destroy this state? I moved here seeking refuge after being jumped by a BLM member who could have been related to me. Because I carried a sign on a street corner that said "character matters, they are using us" and they are. Slaves used to be told if they worked in the house they are better than those who worked in the field. And that colorism still goes on today. We end this with true compassion, with tough love. By saying you matter, you are capable we won't lower the standards so you can compete. We will instead hold you to the same expectations we hold our own children too. Because YOU can do it! Don't assume that because a person has more melanin they are less privileged. There are many African Americans who are successful. It's racist to make an exception based on race. Good or bad. As a mom from the hard places. It was made easy for me to fall down give up and do nothing of quality with my life I wanted more, and it was much harder than it needed to be but so worth it. No matter what pretty words surround CRT. It demands we look at EVERYTHING through the lense of race. You don't have to look hard to find things that CRT theorist Kimberlee Crenshaw says that no white person would dare. Our schools are already promoting Robin D Angelo who states "I've got no answers for mixed race families" I'm struck with the absurdity, that her words would be promoted. A middle school teacher the other day recommended I read "pedagogy of the oppressed" but why?! I'm not interested in reaffirming the narrow viewpoint that I'm limited due to my color or gender. I'm interested in learning how to overcome!

If you want to tackle systemic racism in our schools you have to learn to see us as individuals!

I ge

Joan

June 2, 2021 at 6:36 pm

For the love of all that is holy, please do not inflict this type of identity politics on our courts. The research on implicit bias has been thoroughly debunked by the Harvard prof that invented the assessment out of thin air. It is a concept which is indefensible with evidence but which will tear apart our society. These efforts

- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- 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
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- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206

to condition us to distrust each other will end only in balkanization and worse racism. Do the right thing and refuse to take us down the path of Maoist China. Do not approve the Orwellian "Office of Fairness." Support the US Constitution and Martin Luther King's dream.

**Trudi Watson**  
**June 2, 2021 at 7:35 pm**

Equity, Diversity and Inclusion is not the same as Equality under the law. Equality matters not what your race, ethnicity, sexual orientation/identity, socio-economic status, religion, education, the community you come from, or anything else. To implement Equity, Diversity and Inclusion is an attempt at institutionalizing racist and unjust policies. Utahns are against Critical Race Theory in any form.

**Dave**  
**June 3, 2021 at 7:41 pm**

I agree. Very well put.

**Debra**  
**June 2, 2021 at 9:50 pm**

CJA03-0419. Office of Fairness and Accountability (NEW). Establishes the Office of Fairness and Accountability, and identifies the duties of the Director and the objectives of the Office.

Justice is supposed to be blind, not participating in this false "equity" nonsense. Stop this. This is not helpful in any way. We already have documents that insure equal treatment, from the Declaration of Independence to the Fourteenth Amendment to the Civil Rights Act of 1964: that all Americans should be treated equally, regardless of race, color, creed, or religion. Stop following the radical left ideology. It is divisive and dangerous to our country.

**Shirene Saddler**  
**June 2, 2021 at 9:59 pm**

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- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
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- CJA04-0403
- CJA04-0404
- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
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- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
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- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903
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- CJA04-0906
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- CJA05-0101
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- CJA06-0102
- CJA06-0303
- CJA06-0401
- CJA06-0402
- CJA06-0501
- CJA06-0503
- CJA06-0504
- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101

I'm quite disturbed at the language in the new "fairness" rules. Despite the legislature specifically speaking out against Critical Race Theory your proposed rules embrace the false notion of implicit and inherent bias. CRT has no place in the UTAH Judicial rules and education. Please remove all references that are based in CRT.

**David Sharette**  
**June 2, 2021 at 10:03 pm**

It looks like you are suggesting that you disqualify judges or juries based on their race. That is racism. Please reconsider.

**Michael Andersen**  
**June 2, 2021 at 10:18 pm**

CJA03-0419. Office of Fairness and Accountability

This is vile. Positions in the government shouldn't be filled to fit quotas for race, sex, or other categories. Calling this the "Office of Fairness and Accountability" reeks of the same deliberately hypocritical stench of the "Ministry of Truth" in 1984.

**Irma**  
**June 3, 2021 at 7:01 am**

When the color of the skin determines punishment or absolution for crimes or misdemeanors committed All Laws cease to exist!! This ideology is a most Racist, Discriminatory, and Pernicious ideology! It is inconceivable that government which is the guardian to secure the rights of The People can allowed such disparaged, unfounded and Unjust proposition!!

**Tina Anderson**  
**June 3, 2021 at 8:34 am**

CJA03-0419. Office of Fairness and Accountability

Equal treatment under the law is ALL WE NEED. Please stop pandering and making this political.

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- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0302
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- CJA07-0304
- CJA07-0307
- CJA07-0308
- CJA09-0101
- CJA09-0103
- CJA09-0105
- CJA09-0107
- CJA09-0108
- CJA09-0109
- CJA09-0301
- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
- CJA11-0102
- CJA11-0103
- CJA11-0104
- CJA11-0105
- CJA11-0106
- CJA11-0201
- CJA11-0202
- CJA11-0203
- CJA11-0301
- CJA11-0302
- CJA11-0303
- CJA11-0401
- CJA11-0501
- CJA14-0515
- CJA14-0721
- CJA\_Appx\_F
- CJA\_Appx\_I
- CJA\_Appx\_J
- CJC Terminology
- CJC01
- CJC02
- CJC02.11
- CJC02.12
- CJC02.3
- CJC03
- CJC03.7
- CJC04
- CJC04.1
- CJC05
- CJCApplicability
- Fourth District Local Rule 10-1-407
- LPP1.00
- LPP1.01
- LPP1.010
- LPP1.011
- LPP1.012
- LPP1.013

All we need are judges that can accurately identify:

- when an actual crime has been committed,
- who committed the crime
- and then divvy out a just punishment that fits the crime.

It does not matter what your race, ethnicity, sexual orientation/identity, or anything else...All that matters is – did you do the crime? If so, do the time.

**K.A.**

**June 3, 2021 at 11:19 am**

3-419

As an individual citizen, I support these changes.

It is well-known that the Bar has struggled to diversify its membership, and by extension, it has struggled to produce a diverse judiciary. Diversity in experience usually leads to diversity of thought. And diversity of thought leads to creative solutions to tough problems. Some of our biggest problems in Utah are related to criminal justice access and family law – two areas where a diverse set of voices will be able to nail down cultural blind spots.

Please approve the proposed changes. And please consider the source on the comments in opposition. (Most stem from Rep. Natalie Cline's constituency, which is why "Critical Race Theory" keeps being mentioned.)

**Cato**

**June 5, 2021 at 2:12 pm**

Giving the benefit of the doubt that this proposal is well-intentioned, I am concerned that the creation of an Office of Fairness and Accountability will not achieve its stated objectives as currently articulated.

After reading Isabel Wilkerson's "Caste: The Origin of Our Discontents," "race" may not be the most sound basis upon which to analyze social disparities; "caste" may be a more sound descriptor.

Furthermore, by embedding "race" – a socially-constructed concept with no scientific basis – into the Judicial Code, proposed Rule 3-419 may set a course for the judicial branch that may transport it further from meaningfully addressing existing power disparities that sustain ongoing inequities.

- LPP1.014
- LPP1.015
- LPP1.016
- LPP1.017
- LPP1.018
- LPP1.02
- LPP1.03
- LPP1.04
- LPP1.05
- LPP1.06
- LPP1.07
- LPP1.08
- LPP1.09
- LPP15-0701
- LPP15-0702
- LPP15-0703
- LPP15-0704
- LPP15-0705
- LPP15-0706
- LPP15-0707
- LPP15-0708
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- LPP15-0715
- LPP15-0716
- LPP15-0717
- LPP15-0718
- LPP15-0719
- LPP15-0720
- LPP15.01001
- LPP15.01101
- LPP15.01102
- LPP15.01103
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- LPP15.01107
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- LPP15.01114
- LPP15.01115
- LPP15.01116
- LPP15.01117
- LPP15.01118
- LPP15.01119
- LPP15.01120
- LPP15.0301
- LPP15.0501
- LPP15.0502
- LPP15.0503
- LPP15.0505

My suggestion is to add “caste bias” along with “racial bias” at line 76, page 2 – (3)(A)(iii).

Ideological bias, although not currently a legally-protected status, is also a frequent basis for exclusion. Perhaps ideological bias could also be addressed here.

Finally, I ask that a lottery be used to populate the Judicial Council’s standing committees, and that service on these committees be made a condition of Bar membership. Like juries, such randomness would ensure more inclusive and representative committees than the current manner in which such committees are populated. Incumbents recruiting and promoting allies for committee service is not an optimal technique to effect fairness and accountability.

**Nathan Phelps**

**June 9, 2021 at 12:57 pm**

RE CJA04-0206. Exhibits (AMEND):

I realize that part 5(B) just restates the same procedure as before —property having value should be turned over for disposal under the procedures described in Title 24, Chapter 3 of the Utah Code. But that chapter (and title) only ostensibly applies property that was seized by law enforcement to begin with. For example, I do not see how that Chapter of the code could apply in most civil cases. Nor would it seem to apply to property in a criminal case offered by the defendant.

I suggest the following alternative language:

Property having monetary value shall be returned to its owner or, if unclaimed, shall be disposed of in accordance with Utah Code, Title 24, Chapter 3 (“Forfeiture and Disposition of Property Act”) or Title 67, Chapter 4a (“Revised Uniform Unclaimed Property Act”) as appropriate. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

- LPP15.0506
- LPP15.0508
- LPP15.0509
- LPP15.0510
- LPP15.0511
- LPP15.0512
- LPP15.0513
- LPP15.0514
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- LPP15.0901
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- LPP15.0915
- LPP15.0916
- LPP2.01
- LPP2.03
- LPP3.01
- LPP3.03
- LPP3.04
- LPP3.05
- LPP4.01
- LPP4.02
- LPP4.03

**Rule 4-206. Exhibits.****Intent:**

To establish a uniform procedure for the receipt, maintenance and release of exhibits.

**Applicability:**

This rule shall apply to all trials ~~and court proceedings~~ in courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

**Statement of the Rule:****(1) Marking exhibits**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce by utilizing exhibit labels in the format prescribed by the clerk of court. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered by the submitting party as a representation of the original exhibit. All exhibits offered as evidence shall be marked with a label or tag, which shall contain, at a minimum, the exhibit number or alpha identification, the case number, the date received, and the initials of the clerk who received the exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the clerk of court. Exhibits should not be eFiled. The clerk shall designate the source of the exhibit by the letter "P" if it is received from plaintiff and "D" if it is received from defendant. In cases with multiple parties, the label shall further identify the parties, e.g. 1st D is the first named defendant in the pleadings, 3rd D is the third party defendant.

~~(1)(C) The clerk shall secure the label on the item and shall affix more than one identical label when necessary.~~

~~(1)(D) The court may order exhibits to be marked in advance of the date and time of trial or other hearing.~~

(1)(C) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

**(2) Exhibit custody during trial and tracking.**

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit. Such exhibits include, but are not limited to: biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The clerk of court or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party. The exhibit custody tracking record means the CORIS computer system or a form approved by the Administrative Office of the Courts. If an approved form is used as the exhibit custody tracking record, it shall be placed in the case file.

(2)(B) **Custody of the Court.** Physical exhibits received during trial, other than those in paragraph (2)(A), must be placed in the custody of the clerk of court or designee. Digital exhibits received as evidence by the court during the trial shall be stored



electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The clerk of court or designee must list all exhibits in the exhibit list, and the list shall be made a part of the court record. An exhibit list may be the court's designated case management system or a form approved by the Judicial Council. Each person with custody of an exhibit shall identify herself or himself in the exhibit custody tracking record and record changes in the status of the exhibit contemporaneous with the event.

**(2)(C) Secured Storage.** ~~Prior to daily adjournment, the clerk, under the direction of the court, shall compare the exhibit custody tracking record with the exhibits in the custody of the clerk. The clerk shall keep the exhibits received at trial in a container. The container shall be numbered and shall identify the case name and number.~~

(2)(C)(i) Upon daily adjournment, the clerk of court or designee must compare the exhibit list with the exhibits received that day. Digital exhibits received under paragraph (2)(B) shall be stored electronically in a manner meeting the requirements outlined in paragraph (3)(A)(ii). Physical exhibits received under paragraph (2)(B) must be stored in an envelope or container, marked with the case number, and stored in a secured storage location that meets the requirements outlined in paragraph (3)(A)(ii).

(2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than 72 hours, provided the temporary location is sufficient to prevent access by unauthorized persons, and the location is secured with a key lock, combination lock, or electronic lock. Access to the temporary storage location shall be limited to the clerk of court, judge, or a designee.

~~(2)(D) Each court location shall provide a locked facility for storing exhibits. The Clerk of the Court shall appoint an exhibit manager with responsibility for the security, maintenance and disposition of exhibits. Access to the exhibit storage area by anyone other than the exhibit manager and the clerk is prohibited without a court order.~~

~~(2)(E) Unless otherwise ordered by the court, at the conclusion of the trial or proceeding, the clerk shall release to the party offering them all exhibits not suitable for filing and transmission to the appellate court as part of a record on appeal. Such exhibits include, but are not be limited to: narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and exhibits of unusual bulk or weight. The clerk shall transfer the remaining exhibits to the exhibit manager. The exhibit manager shall record receipt and location of the exhibits.~~

~~(2)(F) The exhibit manager shall record the date of release of exhibits and to whom released, if applicable.~~

**(3) Exhibit custody prior to disposition** ~~Withdrawal of exhibits.~~

(3)(A) Pending Disposition. Exhibits in the court's custody pursuant to paragraph (2)(B) may not be taken from the custody of the clerk of court or designee until final disposition of the case, except upon order of the court and execution of a receipt that identifies the material, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. ~~If the time for filing an appeal or requesting a rehearing or new trial has not expired, exhibits may be withdrawn only upon written order of the court.~~

(3)(A)(i) Exhibit Manager. The clerk of court shall appoint an exhibit manager with responsibility for the security, maintenance, documentation of the chain of custody, and disposition of exhibits. The clerk of court may also appoint a person to act as exhibit manager during periods when the primary exhibit manager is absent. Unaccompanied or unauthorized access to secured storage locations by anyone other than the exhibit manager, acting exhibit manager, or

the clerk of court is prohibited without a court order.

(3)(A)(ii) **Secured Storage Location.** Each court must provide physical and electronic secured storage locations within their facility for storing exhibits retained by the court under subsection (2)(B), and shall maintain a current inventory list of all exhibits in the court's custody. The physical secured storage location must be sufficient to prevent access from unauthorized persons, secured with a key lock, combination lock, or electronic lock, and protected from theft or damage. The electronic secured storage location should be sufficient to prevent access from unauthorized persons. Prior to use, physical and electronic secured storage locations must be certified by the Court Security Director. Requests for certification must be made in writing and shall fully describe the secured storage location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) **Exhibit custody post disposition.** In courts of record, upon final disposition of the case, exhibits in the court's custody shall be disposed of or returned to the offering parties pursuant to paragraph (5). The clerk of court, exhibit manager, or designee shall execute a receipt identifying the material taken, the party to whom the exhibit is released, and the date and time of the release. The receipt shall be made a part of the court record. In courts not of record, upon final disposition of the case, all exhibits shall be returned to the parties.~~If the time for filing appeals or requesting a rehearing or new trial has expired, exhibits may be withdrawn by filing a Notice of Intent to Withdraw Exhibits.~~

(3)(C) **Exhibits in the custody of the parties.** Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) shall remain in the custody of the parties until they are eligible for disposal pursuant to paragraph (5). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.~~The clerk or exhibit manager shall record withdrawal of the exhibits.~~

(3)(D) **Access to exhibits by parties.** Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the clerk of court, exhibit manager or designee, or party with custody of the exhibits shall promptly make available for examination exhibits, or original or true copies of the exhibits.

(4) **Appeals.** Exhibits and exhibit lists shall be provided upon appeal in accordance with the Utah Rules of Appellate Procedure.~~Disposal of exhibits. After three months have expired from final disposition of the case and no appeals have been filed or requests for new trials or rehearing have been made, the clerk shall dispose of the exhibits as follows:~~

~~(4)(A) Property having value shall be returned to its owner or, if unclaimed, shall be given to the sheriff of the county or other law enforcement agency to be sold in accordance with Utah Code Section 24-3-103. The agency receiving the property shall furnish the court with a receipt that may be maintained with the exhibit custody tracking record or noted in the computer record.~~

~~(4)(B) Property having no value shall be destroyed by the clerk of the court who shall furnish the court with a certificate of destruction that may be maintained with the exhibit custody tracking record or noted in the computer record.~~

~~(4)(C) The exhibit manager shall record disposition of the exhibits.~~

(5) **Disposal of exhibits.** Parties may dispose of, and exhibit managers, clerks of court, or designees shall dispose of any exhibits in their custody 90 days after the time for appeal has expired, or the statute of limitations for post-conviction relief, including the time for appeal from post-conviction relief has expired, whichever is later. Exhibits in the court's custody shall be



CJA 4-206

DRAFT: 8-6-21

disposed of as follows:

(5)(A) Property having no monetary value shall be destroyed by the exhibit manager, clerk of court, or designee. The exhibit manager shall create a certificate of destruction including a description of the exhibit, the case and exhibit numbers, and the date and time of the destruction. The certificate of destruction shall be made a part of the court record.

(5)(B) Property having monetary value shall be returned to its owner or, if unclaimed, shall be given to the prosecuting agency, sheriff of the county, or other law enforcement agency to be sold in accordance with Utah Code, Title 24, Chapter 3. The receiving agency shall furnish the court with a receipt identifying the receiving agency, the exhibit received, and the date and time the exhibit was received. The receipt shall be made a part of the court record.

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

**Rule 4-401.02. Possession and use of portable electronic devices.****Intent:**

To permit the use of portable electronic devices in courthouses and courtrooms, subject to local restrictions.

**Applicability:**

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

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

- (1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.
- (1)(B) "Portable electronic device" as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.
- (1)(C) "Court proceeding" means any trial, hearing or other matter, including proceedings conducted by remote transmission.

**(2) Possession and use of portable electronic devices in a courthouse.**

- (2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.
- (2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.
- (2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.
- (2)(D) ~~For the limited purpose of conducting a pilot project to evaluate the performance of justice court judges using courtroom observation, t~~The Judicial Performance Evaluation Commission may record and transmit video and sound of court proceedings to evaluate the performance of justice court judges subject to a basic evaluation. These recordings and transmissions are not public, pursuant to Utah Code sections 63G-2-201(3) and 78A-12-206.

**(3) Restrictions.**

- (3)(A) **Use of portable electronic devices in common areas.** The presiding judges may restrict the time, place, and manner of using a portable electronic device to maintain safety, decorum, and order of common areas of the courthouse, such as lobbies and corridors.
- (3)(B) **Use of portable electronic devices in courtrooms.**
  - (3)(B)(i) A person may silently use a portable electronic device inside a courtroom.

- 45 (3)(B)(ii) A person may not use a portable electronic device to record or  
46 transmit images or sound of court proceedings, except in accordance  
47 with Rule 4-401.01 or subsection (2)(D) above.
- 48 (3)(B)(iii) A judge may further restrict use of portable electronic devices in his or  
49 her courtroom. Judges are encouraged not to impose further  
50 restrictions unless use of a portable electronic device might interfere  
51 with the administration of justice, disrupt the proceedings, pose any  
52 threat to safety or security, compromise the integrity of the  
53 proceedings, or threaten the interests of a minor.
- 54 (3)(B)(iv) During trial and juror selection, prospective, seated, and alternate  
55 jurors are prohibited from researching and discussing the case they  
56 are or will be trying. Once selected, jurors shall not use a portable  
57 electronic device while in the courtroom and shall not possess an  
58 electronic device while deliberating.
- 59 (3)(C) **Use of portable electronic devices while viewing court proceedings**  
60 **conducted by remote transmission.**
- 61 (3)(C)(i) A person may not use a portable electronic device to record,  
62 photograph, or transmit images or sound of court proceedings, except  
63 in accordance with rule 4-401.01 or subsection (2)(D) above. Access  
64 to court proceedings will be contingent on the person agreeing to  
65 comply with the provisions in this rule and any administrative or  
66 standing orders that supplement this rule.
- 67 (3)(C)(ii) A violation of an administrative or standing order may be treated as  
68 contempt of court.
- 69
- 70 (4) **Use of portable electronic devices in court chambers.** A person may not use a  
71 portable electronic device in chambers without prior approval from the judge.  
72
- 73 (5) **Instruction to witnesses.** It should be anticipated that observers in the courtroom will  
74 use portable electronic devices to transmit news accounts and commentary during the  
75 proceedings. Judges should instruct counsel to instruct witnesses who have been  
76 excluded from the courtroom not to view accounts of other witnesses' testimony before  
77 giving their own testimony.  
78

79 Effective May/November 1, 20\_\_20

**Rule 7-302. Court reports prepared for delinquency cases.****Intent:**

To develop minimum standards for court reports to the Juvenile Court.

**Applicability:**

This rule shall apply to all court reports prepared for delinquency cases in the Juvenile Courts.

**Statement of the Rule:**

(1) **Court report.** The probation department or other agency designated by the court shall prepare a court report in writing in all cases in which a petition has been filed.

(2) **Any matter.** The court can direct the probation department to prepare a court report on any matter referred to the court.

(3) **Report contents.** The contents of the court report shall include the following:

(3)(A) a summary of:

(3)(A)(i) the circumstances surrounding the matter before the court;

(3)(A)(ii) the minor's prior referral history, including prior actions taken by the probation department;

(3)(A)(iii) any contacts and history the family has had with other agencies;

(3)(A)(iv) the victim impact statement ~~and an itemized listing of losses or damages suffered by the victim with respect to the matter before the court;~~

(3)(A)(v) responses to the minor's compliant and non-compliant behavior;

(3)(A)(vi) the minor's academic performance and behavior in school and a statement of the minor's employment history if applicable;

(3)(A)(vii) any physical or emotional problems the minor may have that could affect behavior;

(3)(A)(viii) the minor's substance use history; and

(3)(A)(ix) the strengths and weaknesses of the minor as perceived by the minor and the parents or guardian(s); ~~and~~

~~(3)(B) an assessment of:~~

~~(3)(B)(i) the minor's attitude towards the court and the minor's attitude and values in general;~~

~~(3)(B)(ii) the parents' attitude and what corrective action, if any, they took with respect to the minor's conduct and actions that brought the minor before the court; and~~

~~(3)(B)(iii) the strengths and weaknesses of the parents or guardian(s); and~~

- (3)(~~BC~~) the minor's risk level as indicated by a validated risk and needs assessment, as well as a list of risk and protective factors;
- (3)(~~DC~~) recommendations specific to the minor's risk level that consider restorative justice principles and evidence-based best practices;
- (3)(~~DE~~) an acknowledgment that probation considered the Juvenile Disposition Guidelines and if there is a deviation from the statutory presumption or an increase in the level of supervision, the specific factors supporting the deviationsentencing guideline results, including aggravating and mitigating factors; and
- (3)(~~EF~~) any other relevant information.
- (4) **Verification.** All information contained in the court report should be verified whenever possible. Individuals providing information for the report should be identified and any opinions or unverified information should be identified as such.
- (5) **Social information.** No social information shall be gathered on a minor if the minor denies the allegations during the preliminary inquiry unless the minor and parent/guardian or custodian give their written consent for the information to be gathered. ~~(6)~~ No social information shall be provided to the court before the minor's case is adjudicated.
- ~~(67)~~ **Filing.** Once the court report is prepared, it shall be electronically filed in the minor's file.

Effective May/November 1, 20\_\_~~19~~

# Tab 5

**1. FY 2022 Ongoing Turnover Savings Spending Request – Performance Raises**

The Judicial Council approves uses of Ongoing Turnover Savings. This is a request to the Budget and Fiscal Management Committee and the Judicial Council to allocate the use of some of these Ongoing Turnover Savings for ongoing personnel needs that will be utilized in FY 2022.

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**Date:** 9 September 2021

**Department or District:** AOC Administrators

**Requested by:** Ron Gordon and Cathy Dupont

**Request title:** Funding For Performance Raises (Ongoing) – Replacing Career Ladder

**Amount requested:**    **One-time \$**         N/A       

**Ongoing \$**         450,000       

**Purpose of funding request:** Historically, Career Ladder has consumed \$450,000 of ongoing turnover savings each year. As part of the Career Ladder sunset process, for FY 2022, any Career Ladder payments are funded with 1x Turnover Savings as the program phases out by 6/30/2022.

This shift releases the \$450,000 of ongoing turnover savings that was formerly used for Career Ladder to be used to fund Performance Raises for all non-judicial Court personnel – except those who opted into Career Ladder this year (approx. 60 persons). This shift is consistent with the plan approved by the Judicial Council in May 2021 when the Career Ladder sunset plan was approved.

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

In this initial year of our Performance Raise program, we know that there is a certain amount of anxiety among Court personnel about whether the previously announced shift to Performance Raises will be implemented as described. We believe it is essential to address this issue early in the year. Therefore we seek to obtain Judicial Council approval to fund Performance Raises as the top priority for use of accumulated Ongoing Turnover Savings once these funds equal or exceed \$450,000 (expected in Q4). Approval demonstrates Judicial Council support for the use of these funds.

To be clear, although we propose that actual payments be made only after the full \$450,000 has been saved, we intend to communicate to Court personnel through their TCEs and other managers that the Judicial Council has approved and prioritized this request.

**Alternative funding sources, if any:**

None.

**If this request is not funded at this time, what are the consequences or is there an alternative strategy?**

We believe delaying approval of this request weakens trust in the promises made to our Court personnel about the shift to Performance Raises becoming a reality.

#### 4. FY 2022 YE Spending Request – FY 2022 Career Ladder Payments

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2022 are to be spent between July 1, 2021 and June 30, 2022; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2022. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2022.**

**Date:** 9/1/2021

**Department or District:** AOC HR and Finance

**Requested by:** Karl Sweeney and Bart Olsen

**Request title:** FY 2022 Career Ladder Payments

**Amount requested:** \$243,000

**One-time funds**

**Purpose of funding request:** The conversion of the Courts' incentive plans from career ladder to a court-wide incentive plan includes an Judicial Council-approved wind-down of career ladder in FY 2022 using one-time Turnover Savings (1x TOS) to make one-time payments just as was done for FY 2021. The payments for FY 2021 totaled \$467,000. The estimated payment for FY 2022 is \$243,000 (inclusive of benefits). With these payments, all obligations under career ladder will be fulfilled.

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

As of today, 59 Court personnel that were still eligible to participate in career ladder in FY 2022 have submitted paperwork opting in for a final career ladder payment if they complete the requirements for the payment (completing the old career ladder training and time in position standards) by June 30, 2022. Based on these FY 2022 payments being one-time payments that match the amounts that would have been ongoing payments under the former career ladder terms, the total payments, without benefits, are estimated to be \$183,000, which averages \$3,100 per recipient.

AOC Finance has reviewed those opting in to FY 2022 to ensure they are eligible (those who received payments in FY 2021 for completing JA III or PO III levels are no longer eligible) and reviewed the payment amounts with the TCEs for accuracy. These payments will be made during the year as those who opted in complete the requirements. The Courts normally generate in excess of \$5.0M in 1x TOS annually. These savings fund YE 2022 requests as well as carryforward requests that will be paid in FY 2023.

**Alternative funding sources, if any:**

None.

**If this request is not funded at this time, what are the consequences or is there an alternative strategy?**

We would be outside the terms approved by the Judicial Council and communicated to JAs and POs in spring 2021. It would potentially accelerate turnover in these critical areas.



## 5. FY 2022 YE Spending Request – Q1/Q2 Incentive Bonus Payments

The Judicial Branch receives budget funds through the Legislative appropriations process. Funds appropriated for FY 2022 are to be spent between July 1, 2021 and June 30, 2022; however current spending forecasts indicate the Courts will not fully expend our appropriations by June 30, 2022. This is a request to the Budget and Fiscal Management Committee/Judicial Council to allocate the use of some of these anticipated unspent funds for **one-time projects that could be delivered prior to June 30, 2022.**

**Date:** 9/9/2021

**Department or District:** AOC Administrators

**Requested by:** Ron Gordon and Cathy Dupont

**Request title:** FY 2022 Q1/Q2 Incentive Bonus Payments

**Amount requested:** \$365,000 (\$275,000 in cash payments + \$90,000 in retirement and employer taxes)

**One-time funds**

**Purpose of funding request:** The conversion of the Court's incentive plans from career ladder to a court-wide incentive plan includes a Judicial Council-approved conversion to a performance based Incentive Bonus plan. Under this plan all non-judicial Court employees who are not in Career Ladder for FY 2022 have the opportunity to receive Incentive Bonus using one-time Turnover Savings (1x TOS) similar to the one-time Incentive Bonus payments that were made in Spring FY 2021. The incentive payments for FY 2021 totaled \$990,300. The estimated payments for FY 2022 will be \$730,000 which will be requested in 2 tranches (in September and February) and then paid out over the course of the year. The FY 2022 amount is smaller than FY 2021 because those who opted in to Career Ladder for FY 2022 are not eligible to participate in this plan until FY 2023. The totals for all incentive plans are roughly comparable between the 2 years as follows:

	<u>FY 2021</u>	<u>FY 2022</u>
Payment in spring 2021	\$990,300	
Incentive Payment Plan		\$730,000
Career Ladder 1x Payments		<u>\$243,000</u>
Total	\$990,300	\$973,000

**Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.**

Type 4 Incentive Bonus Payments are meant to be given as employees complete their individual performance goals as set with their manager. Not all goals will be accomplished in Q1 or Q2, but with the continued high turnover of Court personnel, we are encouraging managers to begin paying incentive bonus payments as eligible employees complete portions of their annual goals. The amount of the incentive bonus plan varies with some employees receiving Performance Raises and others Incentive Bonus payments. Of course, those who do not complete their performance goals may not receive either of these type of payments.

Incentive payments in Q1/Q2 of FY 2022 not only immediately reinforces the accomplishment of an employee's goals, but serves to assure employees that the Incentive Bonus plan is real and can be relied upon as part of the total compensation plan for the Courts which replaced the legacy Career Ladder plan by the unanimous vote of the Judicial Council in May 2021.

## 5. FY 2022 YE Spending Request – Q1/Q2 Incentive Bonus Payments

The Courts normally generate in excess of \$5.0M in 1x TOS annually. These savings fund Incentive Bonus payments. AOC Finance feels confident that there will be sufficient 1x TOS to fund this Incentive Bonus Payment request and have approximately \$2.5M in carryforward funds to be used for FY 2023.

**Alternative funding sources, if any:**

None.

**If this request is not funded at this time, what are the consequences or is there an alternative strategy?**

We would be outside the terms approved by the Judicial Council and communicated to JAs and POs in spring 2021. It would potentially accelerate turnover in these critical areas.

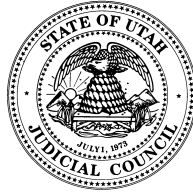


## FY 2022 Year End Forecasted Available One-time Funds

One-time Spending Plan					
Forecasted Available One-time Funds				# One-time Spending Plan Requests (blue); previously approved (orange) Previously Approved One-time Budget Requests/Current Requests in Bold	Current Requests Amount
Description	Funding Type	Amount			Judicial Council Prev. Approved Amount
<b>Sources of YE 2022 Funds</b>					
* Turnover Savings as of pay period ending 8/20/2021	Turnover Savings	668,032		1 Judicial Council Room Upgrades	39,481
** Turnover savings Estimate for the rest of the year (\$2k x 1,792 pay hours)	Turnover Savings	3,584,000		2 Statewide Router Upgrades	160,000
*** From TCE / AOC Budgets	Internal Operating Savings	-		3 WiFi Access Points Upgrades	120,000
Reserve Balance (from August Judicial Council meeting and changes)	Judicial Council Reserve	466,829		4 FY 2022 Career Ladder Payments	243,000
# Total Available Forecasted Funds for FY 2022		4,718,861		5 FY 2022 Incentive Bonus Payments	365,000
<b>Uses of YE 2022 Funds</b>					
+ Maximum Carryforward into FY 2023	Desired Carryforward	(2,500,000)			
<b>Total Forecasted Available YE 2022 One-time Funds</b>				<b>Current Month One-time Spending Requests</b>	<b>608,000</b>
<b>Less: Judicial Council Requests Previously Approved</b>					<b>319,481</b>
<b>Subtotal Remaining Available for YE 2022 Requests</b>					

Updated 8/13/2021

- \* Actual turnover savings as calculated on a pay period basis through 8/20/2021. Data can be found in the Budget Summary Excel workbook on the Personnel tab.
- \*\* Actual per hour turnover savings for the last 4 pay periods (oldest to newest) are \$2,407.50, \$2,094.50, \$2,399.33, and \$2,170.92. The average per hour turnover savings YTD is \$2,256.87. We are estimating an amount of \$2,000 per hour. As we get additional data, we will refine our estimates.
- \*\*\* Based on updated forecasts from budget managers (TCEs, AOC Directors, etc) to be received in January 2022.



## Administrative Office of the Courts

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

September 21, 2021

Ronald B. Gordon, Jr.  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO:** The Judicial Council

**FROM:** Karl Sweeney & Jordan Murray

**RE:** Grant Guardrails: CJA Rule 3-411

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#### 1. What process guided drafting of the revised guardrails?

The revised guardrails proposed in CJA Rule 3-411 are the product of many inputs from a variety of key stakeholders and grant professionals. In the early stages of assessment and throughout development, relationships and resource sharing opportunities were developed in partnership with (1) additional state court jurisdictions; notable examples including Maryland and Kentucky; (2) The National Center for State Courts (NCSC), and (3) The National Grants Management Association (NGMA). These relationships were vital in the assessment and determination of best practices. During the rule drafting process, Accounting Manual §11-07.00 (special funds – grants) was concurrently revised to complement the revised rule and to provide enhanced guidance reinforcing its status as the official grant manual for the courts.

#### 2. How were the revised guardrails assessed?

An initial redline of Rule 3-411 was crafted (draft 1) and first presented to the Policy and Planning Committee (P&P) on June 4, 2021. Following discussion, it was agreed that individual meetings would be held with all members of P&P, culminating in a final meeting of the full committee. These meetings were conducted through the months of July and August, 2021 during which all six members of P&P provided their review and assessment. This allowed for an incremental and continuous improvement process wherein feedback was obtained, discussed, evaluated, and ultimately incorporated into the rule draft. Over the course of these months, the Budget & Fiscal Management Committee (BFMC) was provided progress updates by the Grant Coordinator and Director of Finance.

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

### 3. What are new and notable guardrails (in brief)?

- a. CJA 3-411 (“Applicability” para. 2)  
Agreements wherein the courts are not the principle applicant but for which grant funds would extend to the courts (e.g., MOU) are required to abide by the GAP approval process;
- b. CJA 3-411 §(3) *et seq.*  
Establishes a structured procedure guiding the Grant Application Proposal (GAP) process spanning the complete grant lifecycle (inception to closeout; renewal where applicable);
- c. CJA 3-411 §(3)(A)  
Establishes an 8-week “window period” between initial notice of intent to submit a GAP and the funder’s submission deadline, thus permitting the necessary and thorough evaluation of the opportunity;
- d. CJA 3-411 §(4)  
Implements a collaborative resource impact assessment prepared by the Grant Coordinator to accompany the GAP, with particular emphasis on Court IT resources and capacity;
- e. CJA 3-411 §(5)(A)  
Approval by BFMC is specified in rule as a prerequisite to advance GAPs to the Judicial Council;
- f. CJA 3-411 §(5)(B)  
Requires that all GAPs are to be presented in a regularly scheduled convening of the Judicial Council ensuring decisionmakers are granted the necessary time to issue an informed vote and sufficient notice to comply with CJA 2-103 (Open and closed meetings) and 2-104 (Recording meetings). Provides a specific process including eligibility and evaluation criteria for GAP requests considered “urgent” (i.e., those inside the 8-week window period);
- g. CJA 3-411 §(9)  
Establishes a grant portfolio reporting requirement administered by the Grant Coordinator and delivered to BFMC and the Judicial Council. Includes quarterly reports and an annual compliance assessment; and,
- h. CJA 3-411 §(13)  
An alternative review and approval process established for non-financial collaborations wherein the courts are not the grant applicant, however are asked to provide letters of support or similar contributions to partners.

**Rule 3-411. Grant management.****Intent:**

To establish the policy and procedures for ~~obtaining~~ applying for grant funds.

To delineate the responsibility for the assessment and administration of grant funds, including compliance and renewal projects.

~~To facilitate the coordination of grant funded projects in the courts.~~

**Applicability:**

This ~~R~~ule shall apply to all grants where the courts are the applicant, sub-recipient, or pass-through recipient of public or private grant funds. Applicability of this Rule concerning letters of support, or similar non-financial collaborations with external partners, is specified in Section (13).

~~the application process for and management of grants for the judiciary.~~

This Rule applies broadly to encompass all agreements precedent to the potential receipt of grant funds either directly or indirectly. Agreements include, but are not limited to, memoranda of understanding (MOU) and any agreements for which the courts are contributing material resources or incurring risk, express or implied.

The Grant Application Proposal and approval process is also governed by Rule 3-105- (Administration of the Judiciary). Judicial Council review of Grant Application Proposals is governed by and subject to Rule 2-103 (Open and closed meetings) and Rule 2-104 (Recording meetings).

**Statement of the Rule:****(1) Definitions:**

(1)(A) "Grantor" means the organization providing the funds or the state agency distributing the funds to the courts.

(1)(B) "Grant Application Proposal" (GAP) is the form maintained in the Accounting Manual used to request authorization to pursue grant funding.

(1)(C) "Grant Administering Unit" (GAU) is the Council, committee, court, board of judges, department, or court employee that intends to apply for and administer the grant or grant funds.

(1)(D) "Grant Coordinator" is the individual responsible for facilitating, monitoring, and executing the assessment and administration of Grant Application Proposals ensuring compliance with this Rule and all other applicable state rules, statutes, and federal requirements. Accounting Manual Section 11-07.00(D)(1) further delineates roles and responsibilities.

(1)(E) “Grant Manager” is the individual identified by the GAU or Grant Coordinator to manage the grant for the GAU. Accounting Manual Section 11-07.00(D)(2) further delineates roles and responsibilities.

(1)(F) “Governing Bodies” with oversight of the grant process refer to Boards of Appellate, District, Justice, and Juvenile Court Judges, the Judicial Council, the Budget and Fiscal Management Committee, the Judicial Council Management Committee, the appropriate cCourt-level administrator and trial court executives, and any cCourt committee (standing or ad hoc) vested with authority to direct the affairs of implicated cCourt areas and operations. Judicial Council is the ultimate approving body for the grants process, preceded by the Budget and Fiscal Management Committee’s prior recommendation. Additional Governing Bodies are specific to the implicated cCourt areas. The Grant Coordinator will confirm and may assist the GAU/Grant Manager with identifying the appropriate Governing Bodies. Determinations concerning the exclusive authority reserved by the Supreme Court and Judicial Council are governed by Rule 3-105.

(1)(G) “Notice of Award” (NOA) is the document notifying the applicant that an award has been issued and that funds are available to be accepted. This document contains the terms and conditions of the grant.

(1)(H) “Quorum” is defined in Rule 1-101(1)(S) as “a majority of the members of the Judicial Council, Board, committee or other body.”

(2) **Purpose.** The purpose of the grants policy is to facilitate the prudent pursuit of grant funds that further the courts’ mission to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

(3) **Grant Application Proposals.** To apply for a grant, the person who would serve as the Grant Manager shall complete the steps set forth in the Accounting Manual Section 11-07.00(E)(2). The following requirements set forth in 11-07.00(E)(2) are incorporated into this Rule:

(3)(A) The Grant Coordinator, or their designee, must be notified of the applicant’s intent to apply a minimum of 8-weeks prior to the grant submission deadline established by the Grantor.

#### **(4) Assessment**

(4)(A) The Grant Coordinator will conduct a collaborative assessment of the incremental impacts the grant may have on the courts, with particular emphasis on IT Department resources. The Grant Coordinator must consider:

(4)(A)(i) the capacity of each impacted area to support the grant at current staffing levels; and

(4)(A)(ii) whether any incremental impacts would continue when grant funds cease.

(4)(B) Following the assessment, the GAU must incorporate adjustments identified by the Grant Coordinator in the Grant Application Proposal before circulating it for approval.

#### **(5) Approval of Grant Application Proposals**

(5)(A) The GAU and Grant Coordinator will present Grant Application Proposals to all Governing Bodies within the court that may benefit from or be impacted by the grant. All Grant Application Proposals must be reviewed and recommended by the Budget and Fiscal Management Committee ("BFMC") prior to review and vote by the Judicial Council. Grant Application Proposals that do not receive approval from a Governing Body will not be advanced.

(5)(B) No Grant Application Proposal or grant shall be approved unless it is first presented for approval in a regularly scheduled meeting of the Judicial Council as provided in the annual Judicial Council Meeting Schedule and in compliance with Rule 2-103 and Rule 2-104. "Urgent" requests (GAPs with less than an 8-week period between notice and application due date) must also comply with paragraph (5)(A) and may be considered only if the grant funds are non-federal, do not exceed \$150,000 inclusive of matching funds, and do not include the hiring of new employees. For an urgent request to be approved it must (1) secure a three-quarters supermajority vote among a Quorum of the Judicial Council in a regular meeting as provided in the Judicial Council Annual Meeting Schedule – ad hoc convenings will not be considered for the purpose of grant or Grant Application Proposal review, and (2) the urgency of the matter must not be precipitated by an "emergency of one's own causing."

(5)(C) The GAU must incorporate adjustments identified by a Governing Body in the Grant Application Proposal before it is circulated for re-consideration.

(5)(D) The Grant Coordinator will provide a synopsis of Grant Application Proposals that did not receive approval from a Governing Body to the BFMC.

(5)(E) When evaluating Grant Application Proposals, the BFMC and Judicial Council will consider the following:

(5)(E)(i) Does the grant contribute to accomplishing the mission of the courts?



(5)(E)(ii) Does the grant add value when compared with the burden on existing and future resources, both during the grant project completion phase and thereafter?

(5)(E)(iii) Does the grant provide measurable benefits to marginalized, minority, pro se, or similar under-served individuals or communities?

(5)(E)(iv) Does the grant assist the courts in solving problems and promoting innovations that cannot be accomplished with existing resources?

(5)(E)(v) Does the grant require actions or implementation of policy not in conformity with the mission of the courts or in conformity with policies previously established by the Judicial Council, Supreme Court, or the Utah Constitution?

(5)(E)(vi) Does the grant expose the courts to potential long-term, unfunded financial obligations?

(5)(F) If a Grant Application Proposal or grant implicates both the Supreme Court's and the Judicial Council's exclusive authority, the Supreme Court and the Judicial Council shall comply with Rule 3-105 before making application for the grant or accepting grant funds.

(6) **Submission and tracking of approved applications.** The tracking of approved submissions will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(5).

(7) **Notice of Award and accepting grant funds**

(7)(A) Upon receipt of a Notice of Award, the Grant Coordinator will ensure the notice is consistent with the Grant Application Proposal as approved by the Judicial Council.

(7)(B) In accordance with Utah Code, as detailed in the Accounting Manual Section 11-07.00 Exhibit A, if approved by the Judicial Council, the Grant Coordinator will either:

(7)(B)(i) notify the Executive Appropriations Committee (EAC);

(7)(B)(ii) obtain "review and recommendation" from the EAC; or

(7)(B)(iii) obtain approval from the Legislature.

If approval from the Legislature is required, the Grant Coordinator will ensure grant funds are not accepted until Legislative approval is obtained.

(7)(C) If not approved by the Judicial Council, no funds shall be accepted from the grant and the Grant Coordinator and Grant Manager will notify the Grantor of the Judicial Council's decision not to accept grant funds.

(7)(D) If grant funds may only be accepted with remedial steps, the Grant Coordinator and Grant Manager will communicate those steps in writing to the Grantor. The Grant Coordinator and Grant Manager will work with the State Court Administrator to ensure remediation has been accomplished and to determine whether the grant can be resubmitted for Judicial Council approval.

**(8) Grant implementation.** Grant implementation will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(7). The following requirements in 11-07.00(E)(7) are incorporated into this Rule:

**(8)(A) Judicial Council.** Grant funds shall only be used to hire permanent full-time or part-time employees if approved by the Judicial Council and in accordance with Utah Code.

**(8)(B) Judicial/Quasi-Judicial duties.** If impacted by the grant, the presiding judge(s) of each district shall supervise any judicial or quasi-judicial duties required by the grant.

**(9) Grant reporting requirements.** Grant reporting to the Grantor will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(8). The following requirements in 11-07.00(E)(8) are incorporated into this Rule:

**(9)(A) Judicial Council**

**(9)(A)(i)** Annually, the Grant Coordinator will complete a compliance self-assessment for all grants in the courts' active portfolio and report the results to the BFMC, Audit Director, and Judicial Council.

**(9)(A)(ii)** Quarterly, the Grant Coordinator will prepare a summary of:

**(9)(A)(ii)(1)** all existing court grants;

**(9)(A)(ii)(2)** a pipeline of potential future grants inclusive of all grants-in-progress under paragraphs (5) and (6); and

**(9)(A)(ii)(3)** a list of potential grants denied under paragraph (5)(A).

**(10) Changes in budget or scope**

**(10)(A)** Any changes to a grant must be documented with a grant amendment, whether or not the Grantor requires such documentation. Changes include, but are not limited to:

(10)(A)(i) revisions to the scope or objectives of the overall grant or any portion thereof;

(10)(A)(ii) transfers of funds between different cost categories with no overall budget impact;

(10)(A)(iii) extensions of time to complete grant spending;

(10)(A)(iv) revisions to the amount of funds needed; or

(10)(A)(v) changes in key personnel named in the grant.

(10)(B) Changes may not be implemented until Grantor approval is obtained in writing and executed between the parties.

(10)(C) The Grant Manager and Grant Coordinator will work together to prepare grant amendments.

(10)(D) Grant amendments described in paragraph (12)(B) must be approved by the Judicial Council. All other amendments must be reviewed by General Counsel staff and signed by the State Court Administrator or designee.

(11) **Closing out the grant.** Procedures to close out a grant will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(10).

**(12) Renewing the grant**

(12)(A) Judicial Council approval is required for grant renewal, even when there are no changes to scope, purpose, employees, matching, funding amount, or other areas, or when the prior assessment and/or Legislature approvals will not need to be revised. With appropriate documentation and the recommendation of BFMC, the Management Committee may review and confirm the grant renewal for Judicial Council approval in the consent calendar.

(12)(B) If a grant renewal involves a change that requires a new incremental assessment, or a change to the number of permanent full or part-time employees, or a grant amount requiring a different approval level than previously obtained, the Grant Coordinator will perform the steps in paragraphs (4) and (5). If the grant qualifies, the Grant Coordinator will resubmit the grant to the BFMC and Judicial Council for approval.

**(13) Letters of support and other non-financial collaborations**

(13)(A) External partners pursuing their own grant opportunities ("principle applicant") may request the support of the courts as a stakeholder and explicit non-financial collaborator (NFC). Such collaborations are low-risk and provide documented reasonable assurances that no risk nor grant obligations will transfer to the courts directly or indirectly from the principle applicant. Letters of support or similar contributions to grant applications pursued by external partners must (1) be time-limited, (2) not entail the exchange of funds, (3) be non-binding, (4) not include the hiring of court employees, and (5) not commit or otherwise impose financial obligations on the courts.

(13)(A)(i) Agreements meeting all of the criteria in (13)(A) may be referred to the Grant Coordinator who will perform and document a risk assessment to be delivered to the State Court Administrator. If approved by the State Court Administrator or their designee, the Grant Coordinator shall retain a copy of the approval and notify the initiating party of the decision.

(13)(B) If approval is not granted, and assuming sufficient time to comply with this Rule, the State Court Administrator may recommend the request be modified to undergo the full process for Grant Application Proposals, or, withdrawn from all consideration.

(13)(C) All agreements approved or rejected in this process will be documented in the Grant Coordinator's monthly updates to the Budget and Fiscal Management Committee and Judicial Council.

Effective May/November 1, 20

~~(1) Application process:~~

~~(1)(A) A person interested in applying for grant funds shall prepare a proposal including~~

~~(1)(A)(i) the issues to be addressed by the project,~~

~~(1)(A)(ii) an explanation of how the grant funds will contribute toward resolving the issues identified, and~~

~~(1)(A)(iii) an identification of possible funding sources for the continuing costs of the project when grant funds are no longer available.~~

~~(1)(B) If the applicant is seeking new federal funds or to participate in a new federal program, the proposal shall include:~~

~~(1)(B)(i) the number of additional permanent full time and part time employees needed to participate in the federal program; and~~

~~(1)(B)(ii) a list of any requirements the state must meet as a condition for receiving the federal funds or participating in the federal program.~~

~~(1)(C) Submission of the proposal.~~

~~(1)(C)(i) The proposal shall be reviewed by the court executives or their designees and the judges in the districts which will be affected by the project.~~

~~(1)(C)(ii) If the court executives or their designees and the presiding judges in the districts which will be affected by the project approve the proposal, the proposal shall be forwarded to the grant coordinator at the administrative office.~~

~~(1)(C)(iii) If the court executives or their designees and the presiding judges in the districts that the project will affect approve the proposal, but sufficient time to comply with paragraph (1)(D) prior to submission of the proposal to the funding source is not available, the proposal may be submitted simultaneously to the funding source and the grant coordinator at the administrative office.~~

~~(1)(D) Review of the proposal. The grant coordinator shall review the proposal with the Finance Manager and the court level administrator. This review must be complete prior to submission to the Board(s) of Judges.~~

~~(1)(E) Recommendation by the Board of Judges. The Board of Judges for affected courts must recommend to the Council that the grant proposal be pursued.~~

~~(1)(F) Approval by the Council. Any proposal to apply for grant funds must be approved by the Council.~~

~~(1)(G) Approval by the Legislature. The Judicial Council shall submit proposals to the Legislative Executive Appropriations Committee or to the Legislature as required by statute.~~

~~(1)(H) If the Council approves the proposal, the grant coordinator shall work with the requestor and the affected courts in seeking the grant funds. The administrative office shall constitute the designated agency for approving grant applications if such approval is required by the grant application.~~

~~(1)(I) If the Council or a Board of Judges does not approve the proposal, the proposal shall not be submitted to the funding source or, if already submitted to the funding source, the proposal shall be withdrawn.~~

~~(1)(J) No funds shall be accepted from a funding source until the proposal is approved.~~

~~(2) Administration of grant funds and projects.~~

~~(2)(A) The administrative office shall receive, administer and be accountable for all grant funds awarded to the courts and provide detailed budget reports to the Council upon request.~~

~~(2)(B) The administrative office shall name the project director for each grant. The project director may delegate the supervision of non-judicial daily operations and other non-judicial duties required by the grant. The presiding judges of the districts affected by the project shall supervise any judicial or quasi-judicial duties required by the grant.~~

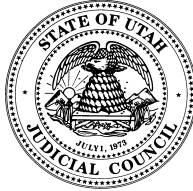
~~(3) Grant applications by non-judicial branch applicants.~~

~~(3)(A) Endorsement of a grant application prepared by a non-judicial branch applicant may only be made by the Judicial Council.~~

~~(3)(B) Any grant application by a non-judicial branch applicant which contemplates participation of the courts or expenditures of court resources should be referred to the Judicial Council for review and endorsement. Judicial branch employees shall not participate in the preparation of a grant application by a non-judicial branch applicant without Judicial Council approval.~~

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

# Tab 6



## Administrative Office of the Courts

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

September 3, 2021

Ronald B. Gordon, Jr.  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Management Committee**

**FROM: Nini Rich, ADR Director**

**RE: Appointment Request - ADR Committee Chair**

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The Judicial Council's Ad Hoc Committee on Alternative Dispute Resolution (ADR) advises the Judicial Council on policies, plans and priorities relating to Alternative Dispute Resolution and works to inform ADR policy as it relates to the Utah State Courts.

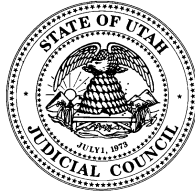
The ADR Committee needs a new Chair due to the retirement of Judge Royal Hansen. Committee members have recommended Judge Adam Mow due to his background and experience in ADR. Judge Mow's experience includes work as a professional mediator and member of the Utah Court Roster of ADR providers. Judge Mow also served as Chair of the Dispute Resolution Section of the Utah State Bar and participated with the ADR Committee in that role. Judge Mow is willing to serve if selected.

**Current ADR Committee Members:**

Judge Ryan M. Harris, Utah Court of Appeals  
Judge Adam T. Mow, Third District Court  
Judge Troy Little, Fifth District Juvenile Court  
Commissioner Michelle C. Tack, Third District Court  
Michele Mattsson, Chief Appellate Mediator, Utah Court of Appeals  
Professor James Holbrook, S.J. Quinney College of Law, University of Utah  
Professor Carolynn Clark, University of Utah, Conflict Resolution Program  
Professor Benjamin Cook, J. Reuben Clark College of Law, Brigham Young University  
Michelle M. Oldroyd, Utah State Bar, Director of Professional Education  
Marcella L. Keck, Attorney/Mediator  
Stephen D. Kelson, Attorney/Mediator  
Talatou Abdoulaye, Ombudsman, Utah Valley University  
Anne A. Cameron, Attorney/Mediator

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





## Administrative Office of the Courts

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

September 1, 2021

Ronald B. Gordon, Jr.  
State Court Administrator  
Catherine J. Dupont  
Deputy Court Administrator

### MEMORANDUM

**TO: Management Committee / Judicial Council**

**FROM: Standing Committee on Court Technology**

**RE: Renewal Appointment: Judge Clemens Landau**  
**New Appointment: Judge Diana Hagen, Dawn Hautamaki**

---

The Standing Committee on Court Technology is requesting the reappointment of Judge Clemens Landau to serve a second term on the Committee. He has expressed interest in continuing to serve on the Committee.

We are also requesting the Judicial Council Management Committee to consider appointing Judge Diana Hagan to the committee as replacement for Judge David Mortensen, who has been appointed to the Judicial Council and Dawn Hautamaki, Clerk of Court from Eighth District/Juvenile Court as replacement for Brooke McKnight.

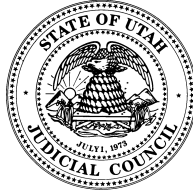
The current Technology Committee members are:

Shane Bahr – AOC  
Erin Boyington – Bar Association Representative  
Judge Debra Jensen – 2<sup>nd</sup> District Juvenile Court  
Mikelle Ostler – Clerk of Court, Fourth District Juvenile  
Chris Palmer – AOC  
Justice John Pearce, Chair – Supreme Court  
Judge Don Torgerson – District Court, Seventh District  
Karl Sweeney (Non Voting Member) – AOC

We have two open positions for TCE's and are awaiting names of those interested in joining the committee.

Thank you

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



## Administrative Office of the Courts

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

**Richard H. Schwermer**  
State Court Administrator

**Ray Wahl**  
Deputy Court Administrator

### MEMORANDUM

TO: Judicial Council / Management Committee  
FROM: Michael C. Drechsel, Assistant State Court Admin. / MUJI Committee Staff  
DATE: September 3, 2021  
RE: MUJI Criminal – Committee Membership Appointment

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The Standing Committee on Model Utah Criminal Jury Instructions is comprised of 13 individuals, two of whom must be district court judges. One of the two district court judge positions expired on September 1, 2021, requiring the committee to seek a replacement member for this position.

### RECOMMENDATIONS:

After seeking a recommendation from the Board of District Court Judges, the committee recommends to the Judicial Council:

- 1) that **Judge Teresa Welch** be appointed to the committee as a district court judge member.

This membership term would start in September 1, 2021 and run to September 1, 2024. This applicant has indicated a willingness to serve and has not done so previously as a judge.

### PROCESS:

The committee solicited a recommendation from the Board of District Court Judges, which had sought out interest from among the district court bench. Judge James Blanch (committee chair) reviewed this recommendation and concurs with the Board. Judge Welch is well-qualified and the committee will benefit from her experience.

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 current list of committee members is:

Member	Position	Organization	Term Expire
Hon. James Blanch, <i>chair</i>	District Court Judge	Courts	09/01/2023
<i>vacant</i>	District Court Judge	Courts	09/01/2024
Hon. Brendan McCullagh	Justice Court Judge	Courts	08/23/2022
Sandi Johnson	Prosecutor	Utah County Attorney's Office	09/01/2023
Stephen Nelson	Prosecutor	US Attorney's Office	09/01/2023
Jeffrey Mann	Prosecutor	Utah Attorney General's Office	09/01/2024
Richard Pehrson	Prosecutor	SLCo. District Attorney's Office	09/01/2024
Debra Nelson	Defense Counsel	Utah Indigent Defense Comm.	11/25/2022
Elise Lockwood	Defense Counsel	Salt Lake Legal Defenders Assoc.	01/28/2022
Sharla Dunroe	Defense Counsel	Salt Lake Legal Defenders Assoc.	09/01/2024
Janet Lawrence	Defense Counsel	Salt Lake Legal Defenders Assoc.	09/01/2024
<i>vacant</i>	Criminal Law Prof.	SLCo. District Attorney's Office	01/28/2022
Jennifer Andrus	Linguist / Communic.	University of Utah – Writing	09/01/2023
Hon. Linda Jones	District Court Judge	Courts	<i>Emeritus</i>

# Tab 7



## Administrative Office of the Courts

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

September 2, 2021

Ronald B. Gordon, Jr.  
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**

**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 September 28, 2021.

***Section 4.5 Electronic Case Management***

*This policy is a new probation policy. The purpose of this policy is to provide direction to probation officers regarding the utilization of virtual, electronic, and social media platforms in addressing the criminogenic risk and need factors of youth. The policy allows for district probation management to establish social media accounts and outlines the conditions for the management and use of these accounts. The policy includes a Social Networking Release Form for obtaining written permission from the youth and parent prior to any interaction with the probation department through social media platforms. The policy prohibits the use or creation of fictitious social media profiles and the use of social media accounts for the sole purpose of monitoring a youth's compliance. This policy has been reviewed and vetted by the IT department and legal counsel.*

I will be available to respond to questions during your meeting on September 14, 2021.

Thank you.

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

## 4.5 Electronic Case Management

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**Policy:**

The purpose of this policy is to assist probation staff in addressing a minor's criminogenic risk and need factors by using electronic platforms and social media including contacts by phone, text messages, and video conferencing.

**Scope:**

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

**Authority:**

- Human Resource Policies and Procedures
  - [Section 5 - Use of Social Media 560](#)
- [Probation Policy 1.4 Probation Officer Code of Conduct](#)
- Legal Memo: The Use of Social Media for Case Management

**References:**

- [Probation Policy 4.15 Probation Responses to Compliant and Non-Compliant Behavior](#)
- Video Platforms and Service Delivery

**Procedure:**

1. Probation staff shall only use social networking accounts to supplement probation work. While utilizing social networking accounts, the following guidelines shall be followed
  - 1.1. Probation staff shall be connected to the Courts Virtual Private Network (VPN) to ensure that a secure connection is established.
  - 1.2. Probation staff shall take reasonable steps to verify the identity of the minor and any others with whom they are meeting, and shall verify any relationships with the minor.
    - 1.2.1. Probation staff, along with the minor and family, shall have operable cameras and microphones during any video conferencing.
  - 1.3. Probation staff shall document in Case Notes in CARE any interaction with a minor through social networking accounts.
2. Probation staff shall only use social networking accounts established by the court. Personal social networking accounts shall not be used or created on behalf of the court.
  - 2.1. District probation management shall establish a process for creating, granting and maintaining access to social networking accounts.
  - 2.2. Probation staff shall not create any fictitious profiles to communicate with minors or families.
3. Accessing social networking accounts shall only be done during work hours.
4. Probation staff will use social networking accounts to address criminogenic risks and needs identified in the PRA and BAW, providing service delivery to minors, following up on program participation, and mitigating risk to the community.

- 4.1. Access shall not be granted for the purpose of maintaining the probation staff's personal social networking account.
- 4.2. Access shall not be granted for the sole purpose of monitoring the minor's compliance.
5. The probation officer shall obtain written permission to view the account by the minor and the minor's parent/guardian/custodian.
  - 5.1. The signed *Social Networking Release Form* (see addendum 4.5.1) shall be eFiled in CARE under Probation Records.
6. The probation officer shall remove the youth from all social networking accounts when court jurisdiction is terminated.
7. Probation staff shall follow up with the minor and/or family regarding any information that has been obtained before making any conclusions or determinations. Probation staff shall use the Incentive and/or Non-Compliant Behavior matrices to appropriately respond to any observed prosocial or pro-delinquent behavior as outlined in [Probation Policy 4.15 Probation Responses to Compliant and Non-Compliant Behavior](#).
  - 7.1. The probation staff shall proceed as follows when a concern has been identified regarding the safety of the community, the probation officer or the youth:
    - 7.1.1. Staff the case with a supervisor or chief;
    - 7.1.2. Make contact with local law enforcement if necessary;
    - 7.1.3. Document any response in Case Notes in CARE.

#### **Addendum 4.5.1 Social Networking Release Form**

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##### **History:**

Drafted by Probation Policy Workgroup on February 18, 2021

Legal Review February 18, 2021

Updated by Policy Committee April 15, 2021

Approved by Chiefs Group June 10, 2021

Approved by JTCE's July 8, 2021

Approved by BJCJ August 13, 2021



### SOCIAL NETWORKING RELEASE FORM

I hereby give permission for my probation officer to have contact with me through my personal social media accounts while under the jurisdiction of the Court. Access will end once jurisdiction is terminated.

I understand and acknowledge that my probation officer may observe the information I have posted to assist me with my case plan goals and assess my compliance with court orders or nonjudicial adjustment requirements.

I understand and acknowledge that I may consult with my attorney/GAL prior to signing this document, and can revoke access to these accounts at any time.

The accounts I've given them permission to contact me through are:

---



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The accounts the probation officer will contact me through are:

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Youth's name (please print):

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\_\_\_\_\_  
Youth's Signature

\_\_\_\_\_  
Date

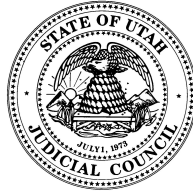
\_\_\_\_\_  
Parent/Guardian's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Probation Officer's Signature

\_\_\_\_\_  
Date





# 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

**TO: Probation Policy Committee**

**FROM: Meg Sternitzky, Juvenile Law Clerk**

**RE: The use of Social Media for Case Management**

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## ISSUES:

1. Are there any issues monitoring a juvenile's social media account?
2. Can a probation officer access a private social media account if the juvenile signs a waiver? Additionally, is the consent of the juvenile's parents or guardians required or is the juvenile's consent sufficient?
3. What is a probation officer's responsibility when a juvenile posts a comment on social media that may indicate risk or harm to themselves or a third party?
4. Does probation have to "unfriend" or remove a juvenile from their social media feed once the juvenile is off probation?
5. How do probation officers control who is at virtual meetings?

## BRIEF ANSWERS:

1. There are potential Fourth Amendment, First Amendment, and Fourteenth Amendment concerns in monitoring a juvenile's social media account, but probation's policy is currently tailored to mitigate these constitutional concerns. However, there are additional concerns that probation should be made aware of, such as over-seizing information. Probation can use filtering software or could limit monitoring to cases where there is a nexus between digital media, social media, or electronic devices and the type of offense to mitigate this additional concern.

2. Probation officers can access a juvenile's private social media account with a waiver. Individuals lose a reasonable expectation of privacy when they consent to a government search of private information. The waiver is the equivalent to a juvenile voluntarily consenting to have his or her private information monitored. Utah recognizes that juveniles can waive their rights -- a parent does not have to consent to the waiver. This means that a juvenile's signature is sufficient for a probation officer to monitor a juvenile's private social media. However, it is important to note that if the minor is under 14, a parent needs to be present for the minor to waive his or her right to the government search. Consequently, it is within the probation department's best interest to have the parent sign the waiver acknowledging that they were present when the minor signed the waiver.
3. If officers observe inappropriate or illegal behavior on a juvenile's social media that they should (1) actively research and verify the accuracy of the information and (2) take the appropriate action to prevent harm in a timely manner.
4. Once a juvenile is off of probation, the monitoring of the juvenile's social media account loses its valid law enforcement purpose; the monitoring no longer serves the purpose of rehabilitation and protection but is unregulated surveillance. Constitutional violations become more likely once the monitoring is no longer valid, so it is important that probation officers "unfriend" or remove juveniles from social media once the juvenile is off of probation.
5. Technology tools probation officers can use to assist in removing unwanted third parties at virtual meetings include, but are not limited to: telephone calls, text messaging, and e-mail communications.

## ANALYSIS:

This memorandum seeks to clarify how probation officers can use social media for case management and the issues related to using social media for case management. The first part of this memorandum will address the issues around monitoring a juvenile's social media account. The second part of this memorandum will then address whether a juvenile can sign a waiver allowing a probation officer to view his or her private social media account. This memorandum will then discuss issues related to a probation officer's responsibility when a juvenile makes inappropriate or illegal posts or comments on social media, whether probation officers have to remove a juvenile from social media once the juvenile is off of probation, and how probation officers can control who is at virtual hearings.

Furthermore, for additional guidance on the use of social media for case management, see the Global Justice Information Sharing Recommendations: [Developing a Policy on the Use of Social Media in Intelligence and Investigative Activities: Guidance and Recommendations](#). These guidelines and recommendations provide the key elements that a social media policy should address. These elements should be kept in mind as probation reviews this memorandum and continues to develop the social media policy.

## I. POTENTIAL CONSTITUTIONAL AND MISCELLANEOUS ISSUES RELATED TO MONITORING A JUVENILE'S SOCIAL MEDIA ACCOUNTS

The first part of this memorandum seeks to identify constitutional issues that could be raised and to determine the constitutionality of monitoring a juvenile's social media account as a condition of probation. Specifically, this section will examine Fourth Amendment, First Amendment, and Fourteenth Amendment concerns. Additionally, this section will conclude with an examination of miscellaneous concerns and provide a recommendation for mitigating those concerns.

#### A. Fourth Amendment

There are no Fourth Amendment concerns with monitoring a juvenile's public or private social media account, but it may be in probation's best interest to obtain a waiver from the juvenile to monitor his or her private social media account. To begin, the Fourth Amendment grants the right of the people to be free from unreasonable searches,<sup>1</sup> which requires "a judicially-sanctioned warrant for government search behavior that violates an individual's 'reasonable expectation of privacy.'"<sup>2</sup> Whether an individual has a reasonable expectation of privacy usually requires the resolution of two issues: (1) whether the individual by their conduct has "exhibited an actual (subjective) expectation of privacy and (2) whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as reasonable."<sup>3</sup> "The extent to which individuals have a reasonable expectation of privacy in their social network publications determines whether courts will consider government searches of social data information 'unreasonable' and therefore protected by the Fourth Amendment."<sup>4</sup> The following paragraphs will examine a juvenile's reasonable expectation of privacy for social media posts shared publicly and for private social media posts.

Courts have rejected the idea that individuals have an objectively reasonable expectation of privacy for publicly available social media content regardless of an individual's subjective expectation.<sup>5</sup> A New York judge compared a public social media post to screaming the content out an open window.<sup>6</sup> As a result, monitoring or surveillance of a public social media account is not a "search" under the Fourth Amendment, because the data is left in plain view of all internet users.<sup>7</sup> Consequently, there are no Fourth Amendment concerns with monitoring a juvenile's public social media account, because there is no reasonable expectation of privacy for information left in plain view of all internet users.

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<sup>1</sup> U.S. Const. amend. IV ("[t]he right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures . . .").

<sup>2</sup> Brian Mund, *Social Media Searches and the Reasonable Expectation of Privacy*, 19 YALE J.L. & TECH. 238, 241 (quoting *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)).

<sup>3</sup> Op. Att'y Gen., No. 83-81 (1985), 1985 Utah AG LEXIS 73 (quoting *Katz v. U.S.*, 389 U.S. 347, 361 (1967)).

<sup>4</sup> *Supra* note 2, at 242.

<sup>5</sup> *Id.* at 248.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Continuing, the law currently treats private social media accounts as deserving the same protections as if they were publicly posted on the Internet,<sup>8</sup> so there are no concerns with monitoring a juvenile's private social media account. However, probation should continue to remain informed in this area of the law as it continues to change with the development of technology. First, the third-party doctrine creates an exception to the reasonable expectation of privacy.<sup>9</sup> "[T]he third-party doctrine states that once an individual invests a third party with information, and voluntarily agrees to share information with a recipient, the individual loses any reasonable expectation of privacy in that information."<sup>10</sup> When this doctrine is applied to social media data, published content voluntarily shared among connections within a private social network loses all reasonable expectation of privacy, because the poster discloses information to the third party platform operator.<sup>11</sup> This means that probation officers can gain access to posted social media data without meeting any probable cause requirements. Second, similar to the third-party doctrine, individuals lose a reasonable expectation of privacy when they consent to a government search of private information.<sup>12</sup> As a result, if a juvenile accepts a friend request from probation, the juvenile is voluntarily consenting to have probation monitor his or her private social media account. It is also important to note that if social media monitoring is a condition of probation, a juvenile probationer has no reasonable expectation of privacy. The Utah Supreme Court has held that "a juvenile probationer who is subjected to a probation condition authorizing random searches has no reasonable expectation of privacy because such an expectation is inconsistent with the fundamental objective of Utah's juvenile probation system." *State ex rel. A.C.C.*, 2002 UT 22, ¶ 21, 44 P.3d 708.

However, as stated above, this area of the law is continuing to evolve, and sound judgment dictates that probation officers should obtain a waiver from the juvenile before monitoring his or her private social media account. For example, in *Riley v. California*, the United States Supreme Court held that the defendant maintained a privacy interest in the contents of his cell phone despite the third party exposure.<sup>13</sup> Consequently, courts are beginning to expand individuals' privacy rights as technology continues to develop. It is therefore paramount that probation officers continue to remain informed in this area of the law, and it is in the probation department's best interest to obtain a waiver from the juvenile. If the probation officer obtains a waiver, the juvenile would be voluntarily consenting to the monitoring. As explained above, individuals lose a reasonable expectation of privacy when they consent to a government search of private information. Moreover, although unreasonable searches under the Fourth Amendment are the primary concern with monitoring a juvenile's social media account, probation officers should also be aware of First Amendment and Fourteenth Amendment concerns.

#### *B. First Amendment*

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<sup>8</sup> *Id.* at 240.

<sup>9</sup> *Id.* at 243.

<sup>10</sup> *Supra* note 2, at 243 (citing *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979)).

<sup>11</sup> *Id.* at 244.

<sup>12</sup> *Id.* at 245.

<sup>13</sup> *Id.* at 257 (citing *Riley v. California*, 573 U.S. 373, 400).

The First Amendment's protections include freedom of speech and association,<sup>14</sup> and monitoring a juvenile's social media accounts has the potential to limit a juvenile's freedom of speech and association. If the government places any limitation on these rights, the limitation must: (1) further an important and substantial government interest unrelated to the suppression of expression and (2) must be no greater than is necessary or essential to the protection of the particular government interest involved.<sup>15</sup> To satisfy the first prong, the monitoring must be directed primarily at the juvenile's future conduct to further the important and substantial government interest and not pure speech or association.<sup>16</sup> This means, for instance, that probation officers cannot monitor a juvenile's social media account solely on the basis of the juvenile's religious affiliation or affiliation with a certain group, such as the Black Lives Matter organization. Continuing, whether a limitation is greater than essential to further the government interest involved requires a determination on a case-by-case basis and depends on factors such as the juvenile's criminal history, the likelihood of the juvenile engaging in similar conduct in the future and whether there exists less restrictive alternatives for accomplishing the goals of rehabilitation and protection of society.<sup>17</sup>

If it is probation's policy to monitor a juvenile's social media account for the purpose of rehabilitation and security, then there should be no First Amendment issues. For example, the United States Supreme Court held that censorship of prison mail is justified because it furthers the important and substantial government interest of rehabilitation and security, and it is essential for the protection of these interests.<sup>18</sup> Additionally, if the monitoring is directed at the juvenile's conduct and not intended to restrain speech, then the limitation should satisfy the second prong.<sup>19</sup> Although probation's current policy does not initially raise a First Amendment issue, it is important for probation to remain aware of this concern. In particular, this policy should apply equally to all juveniles. It should not be applied to monitor juveniles of a specific group or affiliation; i.e., there would be a potential First Amendment issue if probation officers used the policy to only monitor juveniles of a specific religious affiliation. Moreover, probation should always keep in mind whether there is a less restrictive alternative for accomplishing the goal of rehabilitation and protection. The next section of this memorandum examines potential Fourteenth Amendment concerns.

### *C. Fourteenth Amendment*

The Fourteenth Amendment contains the equal protection and due process clauses, but of particular concern, is the Fourteenth Amendment's right to privacy. The right to privacy is included within the Fourteenth Amendment's concept of personal liberty, which includes the right of an individual not to have his or her private affairs made public by the government and the right of an individual to be

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<sup>14</sup> *Supra* note 3, at \*20.

<sup>15</sup> *Id.* at \*20-21 (citing *Procunier v. Martinez*, 416 U.S. 396, 413 (1974)).

<sup>16</sup> *Id.* at \*22.

<sup>17</sup> *Id.* at \*22-23.

<sup>18</sup> *Id.* \*20-21 (citing *Procunier v. Martinez*, 416 U.S. 396, 413 (1974)).

<sup>19</sup> *Id.* at \*21 (citing *Hoffa v. Saxbe*, 378 F. Supp. 1221 (D.C.D.C. 1974)).

free in action, thought, experience and belief from government compulsion.<sup>20</sup> This section will examine whether monitoring a juvenile's social media account violates either of the above-mentioned facets of the Fourteenth Amendment.

In a 1985 informal opinion, the Utah Attorney General stated that “the use of electronic surveillance would not inevitably result in public disclosure of private or confidential information about the individual . . . [a]ny information acquired by a probation or parole agent which pertains to an individual under supervision is protected by state law . . . [and] any information acquired . . . would be treated as confidential.”<sup>21</sup> Similar to electronic surveillance, the monitoring of a juvenile's social media account does not inevitably result in public disclosure, and the information acquired would be treated as confidential. “The supervising agent risks suspension or termination from his employment and civil and criminal liability if he [or she] violates the law and releases confidential or private information.”<sup>22</sup> As a result, the information obtained from monitoring a juvenile's social media account is protected by state law, so the juvenile's private affairs will not be made public.

Continuing, whether government compulsion impermissibly interferes with a juvenile's privacy right will depend on whether the monitoring is reasonably related to the purpose of probation.<sup>23</sup> This determination will depend on individual circumstances, but courts will tolerate a limited intrusion when there is a reasonable relationship between the condition imposed and the purpose of probation.<sup>24</sup> Here, the purpose for monitoring a juvenile's social media is to help with rehabilitation, which is one of the primary goals of probation. Consequently, there is a reasonable relationship between the monitoring and the purpose of probation. As such, the policy, on its face, does not violate the right of a juvenile to be free in action, thought, experience and belief from government compulsion. The last section addresses miscellaneous concerns.

#### *D. Miscellaneous Concerns*

Although probation's policy is currently tailored to mitigate the above-mentioned constitutional concerns, there are additional concerns that probation should be made aware of. One concern is over-seizing information. This would occur, for example, when a probation officer receives information about a juvenile from monitoring another juvenile's social media account. There would be no constitutional violation if the probation officer used this information, because the published content voluntarily shared among connections within a private social network loses all reasonable expectation of privacy. However, it raises the concern that the policy could be used for surveillance and punishment rather than monitoring for rehabilitative purposes. Moreover, the Council for State Governments Justice Center presented research to support the finding that fear of punishment based on increased monitoring

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<sup>20</sup> *Supra* note 3, at \*32.

<sup>21</sup> *Id.* at \*33-34.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at \*35.

<sup>24</sup> *Id.* at \*36.

and interventions actually increase juvenile recidivism.<sup>25</sup> A 2018 law review article provides guidance on how probation departments can prevent the over-seizing of information and eliminate juveniles' fear of punishment.

First, probation departments can use filtering software or a neutral party or agency to forward only the relevant information to probation officers.<sup>26</sup> This would tailor the searches to target only needed information about a particular juveniles. For instance, parents, guardians, or mentors could monitor the juvenile's social media and provide relevant information to the probation officer. Second, probation departments could limit monitoring to cases where there is a nexus between digital media, social media, or electronic devices and the type of offense. For example, some sex crimes, computer hacking, falsification of records through security breaches, and piracy of copyrighted materials are offenses that involve digital media, social media or electronic devices.<sup>27</sup> This would protect juvenile probationers' privacy while respecting the need for supervision.<sup>28</sup> Please note that these points are only recommendations, but should be considered by probation to mitigate these additional concerns.

## II. PRIVATE SOCIAL MEDIA ACCOUNTS AND WAIVER BY A JUVENILE

This section of the memorandum examines whether a waiver by a juvenile is sufficient for a probation officer to monitor a juvenile's private social media account. As a preliminary matter, a probation officer can access a juvenile's private social media account with a waiver. As explained above, individuals lose a reasonable expectation of privacy when they consent to a government search of private information. The waiver is the equivalent to a juvenile voluntarily consenting to have his or her private information monitored. The issue, therefore, is whether a juvenile can waive his or her rights or whether the consent of a parent is needed.

The Supreme Court of Utah reiterated that “[i]n Utah, the process of determining whether juveniles are capable of knowingly and voluntarily waiving their rights begins with Utah Rule of Juvenile Procedure 27A . . . [w]hen the minor is under 14, the presumption is that they are not capable of waiving their rights without the benefit of having a parent, guardian, or legal custodian present . . . if the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor rights without the benefit of a parent, guardian, or legal custodian present.” *R.G. v. State*, 2017 UT 79, ¶ 18, 416 P.3d 478. Additionally, factors such as the minor's age, intelligence, education and experience should be taken into consideration when determining whether a minor's rights were validly waived. *Id.* Thus, Utah recognizes that juveniles can waive their rights -- a parent does not have to consent to the waiver. This means that a juvenile's signature is sufficient for a probation officer to monitor a juvenile's private social media. However, it is important to note that if the minor is under 14, a parent needs to be present for the minor to waive his or her right to the government search. Consequently, it is within the

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<sup>25</sup> Patricia Lee Madison, *The Constitutionality of Probation Conditions that allow for Electronic Searches of Juvenile Probationers*, 40 T. JEFFERSON L. REV. 171, 189 (2018) (citing ELIZABETH SEIGLE, ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR, CORE PRINCIPLES FOR REDUCING RECIDIVISM AND IMPROVING OTHER OUTCOMES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM 12, 17 (2014), <https://csgjusticecenter.org/wp-content/uploads/2015/11/Juvenile-Justice-White-Paper-with-Appendices-.pdf>).

<sup>26</sup> *Id.* at 203.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 204.

probation department's best interest to have the parent sign the waiver acknowledging that they were present when the minor signed the waiver. Furthermore, probation must take into consideration a minor's age, intelligence, education, experience, and other factors when determining whether a minor can validly waive his or her right. This memorandum next considers what a probation officer's responsibility is when a juvenile posts something inappropriate or illegal on social media.

### III. PROBATION OFFICER'S DUTY WHEN A JUVENILE MAKES AN INAPPROPRIATE OR ILLEGAL POST OR COMMENT ON SOCIAL MEDIA

This section of the memorandum examines what a probation officer's duty is when a juvenile makes an inappropriate or illegal post or comment on social media. To begin, there is a general understanding, which has been echoed by the United States Supreme Court, that "[i]n most cases, the probation officer is duty bound to report wrongdoing by the juvenile when it comes to his [or her] attention, even if by communication from the juvenile himself [or herself]." *Fare v. Michael C.*, 443 U.S. 707, 720 (1979). This duty does not disappear when a juvenile's wrongdoing occurs over social media.

The American Probation and Parole Association ("APPA") provides guidance for states regarding the use of social media. The APPA states that "[an] officer has a responsibility to actively research and verify the accuracy of information" when officers observe inappropriate or illegal behavior when monitoring social media activity.<sup>29</sup> The guidelines also provide that "the officer must take the appropriate actions in a timely manner to prevent harm," and that "[f]ailure to do so could create significant liability for the officer and/or the agency."<sup>30</sup> For example, courts have found that a probation or parole officer can be found liable for injuries caused by a person under supervision if the actions of the officer were somehow deliberately indifferent.<sup>31</sup> Deliberate indifference is premised on a duty owed to an individual, a breach of that duty and injuries proximately caused by that breach of duty.<sup>32</sup> Whether one person owes a duty to another depends on whether the person creating the risk to another could have reasonably foreseen that the person's acts or omissions would harm the other person.<sup>33</sup> Therefore, an officer can be found liable if it is determined that it could have been reasonably foreseen that the actions or omissions of the officer (i.e., not reporting inappropriate or illegal behavior) harmed a third person.<sup>34</sup> As a result, it is paramount that if officers observe inappropriate or illegal behavior on a juvenile's social media that they (1) actively research and verify the accuracy of the information and (2) take the appropriate action to prevent harm in a timely manner.

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<sup>29</sup> AM. PROB. & PAROLE ASS'N, THE USE OF SOCIAL MEDIA AS A SUPERVISION TOOL 8-9 (2019), <http://www.gopopai.org/docs/2019/UseofSocialMediaAsSupervisionTool.pdf> Social Media for Case Management.

<sup>30</sup> *Id.* at 9.

<sup>31</sup> PHILLIP LYONS & TODD JERMSTAD, CIVIL LIABILITIES AND OTHER LEGAL ISSUES FOR PROBATION/PAROLE OFFICERS AND SUPERVISORS 194 (2013).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



#### IV. WHETHER PROBATION HAS TO “UNFRIEND” OR REMOVE A JUVENILE FROM SOCIAL MEDIA AT THE END OF PROBATION

It is recommended that a probation officer “unfriend” or remove a juvenile from social media at the end of probation. The Global Justice Information Sharing Initiative released guidelines and recommendations for state law enforcement personnel on the use of social media, and one recommendation provides guidance on when the use of social media sites is authorized.<sup>35</sup> The recommendation states that “simply because information is available to law enforcement does not mean it should be used by law enforcement in the absence of a clearly defined and valid law enforcement purpose.”<sup>36</sup> The Global Justice Information Sharing Initiative gives the example of law enforcement accessing a new neighbor’s profile to look for information on them as an unauthorized and invalid law enforcement purpose.<sup>37</sup> Similarly, once a juvenile is off of probation, the monitoring of the juvenile’s social media account loses its valid law enforcement purpose; the monitoring no longer serves the purpose of rehabilitation and protection but is unregulated surveillance, similar to gathering information on a new neighbor.

Moreover, constitutional violations become more likely once the monitoring is no longer valid. For example, a First Amendment issue can arise if probation continues to monitor a juvenile once he or she is off of probation, because the monitoring would no longer further the important and substantial government interest of rehabilitation.<sup>38</sup> Additionally, once a juvenile is off of probation there would no longer be a reasonable relationship between the monitoring and the purpose of probation, so the monitoring could violate the Fourteenth Amendment right of a juvenile to be free in action, thought, experience and belief from government compulsion.<sup>39</sup> As a result, to insulate probation from these potential consequences, it is important that probation officers “unfriend” or remove juveniles from social media once the juvenile is off of probation. The last section of this memorandum addresses how a probation officer can control who attends a virtual meeting.

#### V. HOW PROBATION OFFICERS CAN CONTROL WHO IS AT VIRTUAL MEETINGS

Probation officers often have to share protected information, such as personal health information, personally identifiable information, and social history during meetings with juveniles.<sup>40</sup> This last section of the memorandum examines how probation officers can continue to protect juveniles’ information from third parties when it is more difficult to prevent the presence of third parties at virtual meetings. The

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<sup>35</sup> GLOB. JUST. INFO. SHARING INITIATIVE, DEVELOPING A POLICY ON THE USE OF SOCIAL MEDIA IN INTELLIGENCE AND INVESTIGATIVE ACTIVITIES: GUIDANCE AND RECOMMENDATIONS 12 (2013), <https://it.ojp.gov/documents/d/Developing%20a%20Policy%20on%20the%20Use%20of%20Social%20Media%20in%20Intelligence%20and%20Inves....pdf>.

<sup>36</sup> *Id.* at 12-13.

<sup>37</sup> *Id.* at 13.

<sup>38</sup> *See supra* Part 1.B.

<sup>39</sup> *See supra* Part 1.C.

<sup>40</sup> Michael Delaney, *Tools to Support Remote Client Contact for Community Corrections -- Part One*, APPA (June 4, 2020), <https://connect.appa-net.org/blogs/5f400f6b090eb00f4cddecef>.

American Probation and Parole Association's Technology Team posted guidance on ways probation officers can communicate with clients that limit the risk of content being compromised by third parties. Technology tools probation officers can use to assist in removing unwanted third parties include, but are not limited to:

- ❑ Telephone Calls: Telephone conversations allow probation officers to engage in dialogue with juveniles and gauge tone while limiting the risk of content being compromised or stored by a third party.<sup>41</sup> However, calls are generally not recorded, so officers would need to document a summary of the contact in the client's record.<sup>42</sup>
- ❑ Text Messaging: Text messages allow the probation officer to directly contact the juvenile, and according to the Addiction Technology Transfer Center Network, text messaging is an effective tool to communicate direct, factual messages, such as reminders for court, office visits, and treatment dates.<sup>43</sup> It is important to note; however, that officers should avoid the use of personal phones to conduct official business, as they could become discoverable.<sup>44</sup> Furthermore, the app should feature end-to-end encryption effectively scrambling the message while it is in-transit.<sup>45</sup>
- ❑ E-mail Communications: E-mails also allow the probation officer to directly contact the juvenile. It is important when using this method to use secure e-mail where possible and encrypt protected communications.<sup>46</sup>

Although each method of communication poses additional challenges, they are easy and useful ways probation can limit third party presence during meetings. Additionally, these methods of communication can be used in conjunction with virtual WebEx meetings; i.e., a probation officer could choose to email protected information to a juvenile if a third party is present during the WebEx meeting. It is also important for probation officers to keep these different methods of communication in mind to limit the risk of content being compromised by third parties.

## CONCLUSION:

There are potential Fourth Amendment, First Amendment, and Fourteenth Amendment concerns in monitoring a juvenile's social media account, but probation's policy is currently tailored to mitigate these constitutional concerns. However, there are additional concerns that probation should be made aware of, such as over-seizing information. Furthermore, probation officers can access a juvenile's private

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<sup>41</sup> Michael Delaney, *Tools to Support Remote Client Contact for Community Corrections -- Part Two*, APPA (Nov. 27 2020), <https://connect.appa-net.org/blogs/5f400f6b090eb00f4cddecef>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

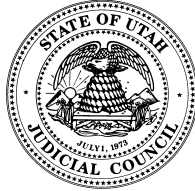
<sup>44</sup> *See supra*, note 40.

<sup>45</sup> *Supra*, note 41.

<sup>46</sup> *Supra*, note 40.

social media account with a waiver, and Utah recognizes that juveniles can waive their rights -- a parent does not have to consent to the waiver. However, it is important to note that if the minor is under 14, a parent needs to be present for the minor to waive his or her right to the government search. Continuing, if officers observe inappropriate or illegal behavior on a juvenile's social media that they should (1) actively research and verify the accuracy of the information and (2) take the appropriate action to prevent harm in a timely manner. And once a juvenile is off of probation, the monitoring of the juvenile's social media account loses its valid law enforcement purpose, so it is important that probation officers "unfriend" or remove juveniles from social media once the juvenile is off probation. Finally, technology tools probation officers can use to assist in removing unwanted third parties at meetings include, but are not limited to: telephone calls, text messaging, and e-mail communications.

# Tab 8



## Administrative Office of the Courts

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

September 20, 2021

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**

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

**CJA 2-101. Rules for the conduct of Council meetings (AMEND)**

**CJA 5-101. The Board of Appellate Court Judges (AMEND)**

**CJA 6-101. The Board of District Court Judges (AMEND)**

**CJA 7-101. Juvenile Court Board, Executive Committee and Council Representatives (AMEND)**

**CJA 9-101. Board of Justice Court Judges (AMEND)**

The proposed amendments remove the requirement to follow Robert's Rules, bringing the boards and Judicial Council in line with current practice. This appears to be a self-imposed requirement that isn't followed and isn't required under the Open and Public Meetings Act. Policy and Planning believes the use of general principles for conducting meetings in an orderly and professional manner should be sufficient.

**CJA 3-303. Justice court clerks (AMEND)**

In conjunction with the Judicial Institute, the Board of Justice Court Judges recommends adding an annual certification requirement for justice court clerks.

**CJA 3-117. Committee on Court Forms (AMEND)**

**CJA 3-401. Office of General Counsel (AMEND)**

The proposed amendments make the rules consistent with [CJA 1-205\(3\)\(D\)](#) ("the Administrative Office shall serve as secretariat to the Council's committees") and [CJA 1-204\(8\)](#) ("the Administrative Office shall serve as the secretariat to the executive committees"), providing the State Court Administrator with the flexibility to assign AOC resources where appropriate.

**CJA 3-411. Grant management (AMEND)**

At the Judicial Council's direction, rule 3-411 outlines significant changes to the courts' grant management program.

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

**CJA 4-202.02. Records classification (AMEND)**

A working group is preparing a new form on petitions to determine competency. The form will have two parts (1) the petition without confidential information and (2) a statement in support that includes confidential information. The proposed amendment in line 189 would ensure the statements in support are classified as private. Parties, the subject of the record, attorneys, and anyone with a court order (among others) may access private records (CJA 4-202.03(3)).

*\*The proposed amendment in line 169 went out for public comment in July. It is included here for tracking purposes only.*

**CJA 4-208. Automatic expungement of cases (NEW)**

New rule 4-208 governs the Administrative Office of the Court's development and implementation of an automated expungement process. The rule requires approval by the Judicial Council of all automated processes and approval of the form and content of automated orders. Processes must also meet any requirements under the Rules of Criminal Procedure.

**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 2-101. Rules for the conduct of Council meetings.****Intent:**

To provide for the formal and orderly consideration of issues by the Council.

**Applicability:**

This rule shall apply to all meetings of the Council.

**Statement of the Rule:**

(1) A quorum of the Council is necessary for the Council to take any action. Council members may be present either physically or by means of electronic communication.

(2) The affirmative vote of a majority of the Council members present is required to take final action on any rule or resolution.

(3) The presiding officer votes only in the event of a tie. All other members of the Council have one vote.

(4) Meetings of the Council shall be conducted in ~~accordance with Robert's Rules of Order. The Council may suspend the rules of order upon the affirmative vote of a majority of the Council members present. When the rules of order are suspended, the Council meeting shall be conducted in~~ an orderly and professional manner.

1 **~~Article 1. General.~~**

2  
3 **Rule 5-101. ~~The~~ Board of Appellate Court Judges.**

4  
5 **Intent:**

6 To establish the Board of Appellate Court Judges.

7  
8 To establish the procedure of the Board in the conduct of Board meetings.

9  
10 **Applicability:**

11 This rule shall apply to the Board of Appellate Court Judges.

12  
13 **Statement of the Rule:**

14 (1) **Establishment.** There is established a Board of Appellate Court Judges.

15  
16 (2) **Membership.** Members of the Board shall be the members of the Court of Appeals and the  
17 members of the Supreme Court

18  
19 (3) **Chair and vice chair.** The Chief Justice of the Supreme Court and the Presiding Judge of  
20 the Court of Appeals shall alternate as the Chair and Vice Chair of the Board and shall alternate  
21 presiding over the meetings of the Board.

22  
23 (4) **Meetings.**

24  
25           (4)(A) The Board shall meet a minimum of three times a year to transact any business  
26           that is within its jurisdiction.

27  
28 ~~(45)(B)~~ The Board shall act by majority vote. All members of the Board have the right to  
29 vote.

30  
31 ~~(4)(C)~~ A quorum from both the Supreme Court and the Court of Appeals is required for a  
32 Board meeting. A quorum for the Supreme Court is at least three members and a  
33 quorum for the Court of Appeals is at least four members.

34  
35 ~~(46)(D)~~ Board meetings shall be conducted in ~~accordance with Robert's Rules of~~  
36 ~~Order~~ an orderly and professional manner and are not open and public meetings.

37  
38 Effective ~~December 16, 2019~~ November 1, 2021



**Rule 6-101. ~~The~~ Board of District Court Judges.****Intent:**

To establish the Board of District Court Judges.

To prescribe the composition of the Board's membership, the method of selecting Board members and officers, and the members' terms of office.

To establish the procedure of the Board in the conduct of Board meetings.

**Applicability:**

This rule shall apply to the Board of District Court Judges.

**Statement of the Rule:**

(1) **Establishment.** There is hereby established a Board of District Court Judges.

(2) **Election.** Members of the Board shall be elected by the district court judges present at the district court business meeting at the annual judicial conference. The judges present at this meeting shall constitute a quorum. Nominations may be made only by district court judges, and must come from the judicial district or districts in which the vacancy exists.

(3) **Membership.** The Board shall consist of the following eleven positions:

(3)(A) one from the First Judicial District;

(3)(B) two from the Second Judicial District;

(3)(C) three from the Third Judicial District;

(3)(D) two from the Fourth Judicial District;

(3)(E) one from the Fifth Judicial District; and

(3)(F) two from the Sixth, Seventh, or Eighth Judicial Districts.

(4) **Terms.** Members of the Board shall serve staggered three-year terms or until a Board member is replaced or resigns.

(5) **Chair and vice chair.**

**(5)(A) Establishment.** There shall be a Chair and Vice Chair of the Board selected from among the Board.

**(5)(B) Election.** The Vice Chair shall be elected by the Board members and shall be in the first or second year of a three-year term. The Vice Chair shall serve as Chair in the absence of the Chair or at the request of the Chair.

**(5)(C) Vice chair's term.** The Vice Chair shall become Chair of the Board during the second or third year of a three-year term. The Chair shall preside over all meetings of the Board and over the annual district court business meeting.

**(6) Vacancies.**

(6)(A) If a vacancy occurs for any reason between annual district court business meetings, the Board shall elect a replacement for the unexpired term of the vacancy. The Board shall adhere to the district makeup of the Board in this selection.

(68)(B) Vacancy in the office of the chair. Should the Chair of the Board resign or leave the Board for any reason, the Vice Chair shall become Chair, serving both the unexpired term of the Chair and full term as Chair.

(69)(C) Vacancy in the office of the vice chair. In the event that the Vice Chair of the Board resigns or leaves the Board for any reason, a new Vice Chair shall be selected by the Board from among its members to serve the unexpired term of the Vice Chair.

(740) Meetings.

(7)(A) The Board shall meet a minimum of once every two months to transact any and all business that is within its jurisdiction.

(744)(B) The Board shall act by majority vote. All members of the Board have the right to vote. Six members of the Board constitute a quorum.

(7)(C) The meetings shall be conducted in an orderly and professional manner and in accordance with this Code.

(742)(D) When a Board member is unable to attend a Board meeting, that member may designate a district judge, from the same district or districts represented by the absent member, to attend the meeting on behalf of the absent member. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. However, the substitute judge may not make motions or vote on Board issues.

~~(13) Board meetings shall be conducted in accordance with Robert's Rules of Order.~~

~~(14) All business conducted by the Board shall be conducted in accordance with this Code.~~

Effective ~~May 1, 2019 pursuant to CJA Rule 2-205~~ November 1, 2021

**Rule 7-101. Juvenile Court Board, Executive Committee and Council Representatives.****Intent:**

To establish a Board of Juvenile Court Judges.

To establish an Executive Committee of the Board.

To establish the authority and duties of the Board and the Executive Committee.

To establish the election procedure for Board members, Chair elect of the Board and the Judicial Council representatives.

**Applicability:**

This rule shall apply to the Board of Juvenile Court Judges.

**Statement of the Rule:****(1) Juvenile court board.**

(1)(A) **Establishment.** There is hereby established a Board of Juvenile Court Judges.

(1)(B) **Membership.** The Board shall be composed of seven juvenile court judges elected at the Annual Judicial Conference Juvenile Court business meeting by sitting Juvenile Court Judges.

(1)(C) **Representation.** Representation from each judicial district shall be as follows:

(1)(C)(i) Five Board members from the Second, Third and Fourth Judicial Districts with at least one representative from each District; and

(1)(C)(ii) Two Board members from the First, Fifth, Sixth, Seventh or Eighth Districts.

(1)(D) **Election.** The juvenile court judges present at the annual business meeting shall constitute a quorum. Nominations for board positions may be made by sitting Juvenile Court Judges only. Nominations must come from the Judicial District or Districts in which the vacancy exists. All sitting judges shall be entitled to vote for all members of the Board.

(1)(E) **Terms.** The terms of the initial Board members shall be determined by lot, with four members selected to serve three year terms and three members selected to serve two year terms. Successors shall be elected for three year terms.

(1)(F) **Vacancies.** If a vacancy occurs for any reason on the Board between Annual Judicial Conferences, the Board shall elect a replacement for the unexpired term of the vacancy. In filling the vacancy, the Board shall adhere to and perpetuate the District representation in effect at the time of the vacancy.

**(2) Chair and vice chair.**

(2)(A) **Establishment.** There shall be a Chair and Vice Chair of the Board.

(2)(B) **Chair's term.** The Chair shall serve a one year term beginning immediately after the Annual Judicial Conference in the year following election as Vice Chair.

(2)(C) **Responsibilities.** The Chair shall preside over all meetings of the Board and the Juvenile Court Judges Meeting at the Annual Judicial Conference, and perform other duties as set forth in the Juvenile Court Act, this Code and as directed by the Board.

(2)(D) **Vacancy in office of chair.** In the event that the Chair resigns or leaves the Board for any reason, the Vice Chair shall become Chair, serving both the unexpired term of the Chair and the full term as Chair.

(2)(E) **Election.** The Vice Chair shall be elected by the Board members at the commencement of the first or second year of the Vice Chair's three year term on the Board. The Vice Chair shall serve as Chair in the absence of the Chair or at the request of the Chair.

(2)(F) **Vice chair's term.** The Vice Chair shall become Chair of the Board for a one year term immediately following the Annual Judicial Conference next succeeding his election as Vice Chair.

(2)(G) **Vacancy in office of vice chair.** In the event that the Vice Chair resigns or leaves the Board for any reason, a new Vice Chair shall be elected by the Board from among its members to serve the unexpired term of the Vice Chair and to succeed as Chair as otherwise provided in this rule.

### (3) **Meetings of the board.**

(3)(A) The Board shall meet a minimum of once every two months to transact any and all business that is within its jurisdiction. This meeting shall be presided over by the Chair of the Board or the Vice Chair in the absence of the Chair or at the request of the Chair.

(3)(B) The Board shall rule by majority vote. All Board members have the right to vote. Four members of the Board constitute a quorum.

(3)(C) The Board meetings shall be conducted in an orderly and professional manner and in accordance with ~~Roberts' Rules of Order and~~ this Code.

(3)(D) When a Board member is unable to attend a Board meeting, that member may designate a juvenile court judge to attend the meeting on behalf of the absent member. The substitute and the absent member must be from the same district group identified by paragraph (1)(C) above. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. The substitute judge may make motions and vote.

### (4) **Executive committee.**

(4)(A) **Membership.** There is hereby established an Executive Committee of the Board. The committee shall be comprised of three members: the Chair of the Board, the Vice Chair and one member of the Board selected by the Board members to serve at large.

(4)(B) **Duties and responsibilities of the executive committee.** The duties and responsibilities of the Executive Committee are as follows:

(4)(B)(i) Assist the Board in establishing a planning capability in assessing and projecting needs, resources, and policies.

(4)(B)(ii) Act as liaison with other agencies and parties who seek contact with the Board.

(4)(B)(iii) Screen and reduce the number of matters presented to the full Board for its consideration to ensure that all matters referred to it require full Board consideration.

(4)(B)(iv) Review initiatives, proposals and questions that will be submitted to the full Board to ensure that information is complete and in proper form to facilitate expeditious handling by the Board.

(4)(B)(v) Assist the Administrative Office in staff work as assigned by the Board where judicial guidance may be required in carrying out Board policy.

(4)(B)(vi) Consult with the Administrative Office on matters requiring immediate attention or on matters needing judicial consideration but not requiring full Board consideration.

(4)(B)(vii) Accomplish all other assignments as may be directed by the Board.

**(5) Procedures of the board.**

(5)(A) The Chair of the Board shall serve as Chair of the Executive Committee. When the Chair of the Board is not available, the Chair elect shall act in the Chair's behalf.

(5)(B) All action taken by the Executive Committee shall be reported to the full Board in the form of minutes and reports and may be subject to ratification by the full Board.

(5)(C) A time and date certain shall be established for Executive Committee meetings. The juvenile court administrator or designee shall serve as secretariat to the Committee.

**(6) Judicial council representatives.**

(6)(A) The Juvenile Court shall have three representatives on the Council, with no two representatives serving from the same judicial district:

(6)(A)(i) one from the Second, Third, or Fourth Judicial District;

(6)(A)(ii) one from the First, Fifth, Sixth, Seventh, or Eighth Judicial District; and

(6)(A)(iii) one serving at-large.

(6)(B) Timing of elections, and the process for filling vacancies, shall be conducted pursuant to Rule 1-201. Nominations can be made by any sitting judge for any Council representative. Voting shall be by all Juvenile Court judges present at the annual business meeting. Those present at the business meeting will constitute a quorum.

(6)(C) Council representatives shall serve staggered three-year terms, with one Juvenile Court judge elected to the Council each year.

*Effective ~~June 22, 2020~~November 1, 2021*

**Rule 9-101. Board of Justice Court Judges.****Intent:**

To prescribe the membership, method of selection, term of office and basic procedures of the Board.

**Applicability:**

This rule shall apply to the Board of Justice Court Judges.

**Statement of the Rule:**

(1) **Establishment – Membership.** There is hereby established a Board of Justice Court Judges comprised of the chair, six at-large members, and the three Council representatives.

(2) **Election.** Members of the Board shall be elected by the justice court judges in connection with the justice court business meeting at the annual judicial conference. For all elections contemplated by this rule, judges may vote in person or remotely.

(3) **Term.** The chair and the at-large members shall serve staggered two year terms. The Council representatives shall serve during the length of their term as Council representatives.

(4) **Chair and Vice Chair.**

(4)(A) The chair shall preside over all meetings of the Board and over the Justice Court judges' training conferences. The chair may not simultaneously serve as a Council representative.

(4)(B) Members of the Board shall elect a vice-chair and an education liaison. The vice-chair shall serve as chair in the absence of the chair or upon request of the chair. Neither the vice-chair nor the education liaison may simultaneously serve as a Council representative.

(5) **Executive Committee.** There shall be an Executive Committee comprised of the chair, vice-chair and one of the Council representatives designated by the chair. The Executive Committee may take necessary action on behalf of the Board between Board meetings.

(6) **Vacancies.** If vacancies occur for any reason on the Board between elections, the Board shall elect a replacement for the unexpired term of the vacancy.

(6)(A) **Vacancy in the office of chair.** Should the chair resign or leave the Board for any reason, the vice-chair shall become chair for the remainder of the term.

(6)(B) **Vacancy in the office of vice chair.** Should the vice-chair of the Board resign or leave the Board for any reason, a new vice-chair shall be elected by the Board from among its members to serve the unexpired term of the vice-chair.

45  
46 ~~(640)~~(B) **Vacancy – Council representative.** If a vacancy occurs for any reason among  
47 the representatives to the Council, the Board shall designate an interim representative to  
48 serve until the next annual training conference, at which time a representative shall be  
49 elected to fill the unexpired term.

50  
51 ~~(744)~~ **Meetings of the Board.** The Board shall meet at least quarterly to transact any and all  
52 business that is within its jurisdiction. The Board shall rule by majority vote. All members, except  
53 the three Council representatives, are voting members. Four voting members of the Board  
54 constitute a quorum. Board meetings shall be conducted ~~generally in accordance with Robert's~~  
55 ~~Rules of Order~~**in an orderly and professional manner.**

56 -  
57 ~~(12) All business conducted by the Board shall be conducted~~ **and** in accordance with this Code.

58  
59 ~~(843)~~ **Certifications.** The Board shall be responsible for certifying new justice courts and  
60 recertifying existing justice courts to the Judicial Council as outlined in Rule 9-108.

61  
62 *Effective ~~August 21, 2020~~**November 1, 2021***



**Rule 3-303. Justice court clerks.****Intent:**

To provide for clerical services in justice courts and to establish uniform responsibilities for justice court clerks.

**Applicability:**

This rule shall apply to all justice courts.

**Statement of the Rule:**

(1) Clerks shall be provided to each justice court to assist the judge in managing the operation of the courts. The clerk shall have primary responsibility for performing clerical duties including:

(1)(A) recordkeeping;

(1)(B) filing reports;

(1)(C) scheduling hearings and trials;

(1)(D) mailing notices;

(1)(E) maintaining case files;

(1)(F) collecting fines;

(1)(G) docketing cases;

(1)(H) taking and certifying acknowledgments and administering oaths; and

(1)(I) other court related duties as assigned.

(2) The judge shall concur in the appointment of the clerk assigned to serve the court and shall participate in the personnel evaluation process for that clerk.

(3) If the clerk is serving the court in a part time capacity, the clerk shall not be assigned to other duties which present a conflict of interest or promote an appearance of impropriety regarding court responsibilities.

(4) Counties and municipalities are responsible for bearing the expense of providing clerical services to the justice courts located within their jurisdictions.

(5) Each clerk shall be certified on an annual basis by demonstrating proficiency with the training required by the Board of Justice Court Judges.

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

**Rule 3-117. Committee on Court Forms****Intent:**

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

**Applicability:**

This rule shall apply to the judiciary.

**Statement of the Rule:**

(1) The committee shall conduct a comprehensive review of the need for court forms to assist parties and practitioners in all court levels.

(2) The committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program.

**(3) Process for form creation.**

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

(3)(b) Forms should be written in plain language and reference the statutes and rules to which the forms apply.

(3)(c) The committee shall solicit input from other interested groups as it deems appropriate. The committee may establish subcommittees using non-committee members to facilitate its work.

(3)(d) The committee may recommend to the Judicial Council mandatory use of particular forms. However, the Judicial Council's designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.

(3)(e) The Office of General Counsel shall ~~staff the committee and shall~~ review all forms for legal correctness ~~before final approval by the committee.~~

(4) The State Law Librarian shall be responsible for maintaining and archiving the forms.

(5) The Administrative Office shall provide administrative support to the committee.

Effective ~~May 22, 2017~~ November 1, 2021

**Rule 3-401. Office of General Counsel.****Intent:**

To establish the office of General Counsel within the Administrative Office.

To identify the office of General Counsel as the primary authority for coordinating the provision of legal services to the judiciary.

To establish uniform procedures governing the provision of legal services to the judiciary.

To define the relationship between the office of General Counsel and the Office of the Attorney General.

**Applicability:**

This rule shall apply to the judiciary.

**Statement of the Rule:**

(1) ~~Establishment of office of general counsel.~~ The office of General Counsel is established within the Administrative Office to provide legal services to the judiciary.

(2) **Responsibility.** The office of General Counsel shall have primary responsibility for providing the following legal services:

(2)(A) informal advice and counsel;

(2)(B) written opinions;

(2)(C) legislative drafting;

(2)(D) legal representation in administrative and judicial proceedings where the claimant is seeking declaratory, injunctive, or extraordinary relief or where risk management coverage is not provided;

(2)(E) negotiation, drafting, and review of contracts and leases;

(2)(F) consultation, drafting, and review of judicial policies and procedures;

(2)(G) staff support to committees established by the Council and the Supreme Court as directed; and

(2)(H) coordination of, and arrangement for, legal representation by the Attorney General's Office or outside counsel in appropriate cases.

(3) **Protocol for requesting legal assistance.**

(3)(A) **Courts of record.**

(3)(A)(i) **Non-judicial officers and employees of the state.**

(3)(A)(i)(a) All requests for legal assistance, other than requests for informal advice or counsel, shall be in writing and directed to the appropriate state level administrator, who shall refer appropriate requests to the office of General Counsel.

(3)(A)(i)(b) All requests for legal representation and indemnification shall be made in writing by the employee or officer who is named as a defendant. The request shall be made within ten days of service and directed to the office of General Counsel. A copy of the request shall be sent by the individual officer or employee to the Office of the Attorney General at that time. General Counsel shall be responsible for coordinating the legal representation of non-judicial officers and employees with the Attorney General's Office.

(3)(A)(ii) **Judicial officers.**

(3)(A)(ii)(a) All requests for legal assistance from judicial officers, other than requests for informal advice or counsel, shall be in writing and directed to General Counsel.

(3)(A)(ii)(b) All requests for legal representation and indemnification shall be made by the judicial officer who is named as a defendant. The request shall be made within ten days of service and directed to General Counsel. General Counsel shall be responsible for coordinating the legal representation of judicial officers with the Attorney General's Office.

(3)(B) **Courts not of record.**

(3)(B)(i) All requests for legal assistance, representation and indemnification shall be made in writing by the officer or employee seeking assistance and directed to the appropriate governmental entity.

(3)(C) **Judicial council, boards of judges, committees and task forces.**

(3)(C)(i) All requests for legal assistance from the Council, the Boards, committees or task forces established by the Council or the Supreme Court shall be in writing and directed to General Counsel from the presiding officer of the Council, Board, committee or task force.

86

87 (4) **Relationship to attorney general's office.** The provision of legal services to the judiciary  
88 by the Office of General Counsel and the Office of the Attorney General shall be governed  
89 by this rule and Utah Code section 63G-7-901.

90

91 *Effective November 1, ~~2018~~2021*

92

**Rule 3-411. Grant management.****Intent:**

To establish the policy and procedures for ~~obtaining-applying for~~ grant funds.

To delineate the responsibility for the assessment and administration of grant funds, including compliance and renewal projects.

~~To facilitate the coordination of grant funded projects in the courts.~~

**Applicability:**

This ~~R~~ule shall apply to all grants where the courts are the applicant, sub-recipient, or pass-through recipient of public or private grant funds. Applicability of this Rule concerning letters of support, or similar non-financial collaborations with external partners, is specified in Section (13).

~~the application process for and management of grants for the judiciary.~~

This Rule applies broadly to encompass all agreements precedent to the potential receipt of grant funds either directly or indirectly. Agreements include, but are not limited to, memoranda of understanding (MOU) and any agreements for which the courts are contributing material resources or incurring risk, express or implied.

The Grant Application Proposal and approval process is also governed by Rule 3-105- (Administration of the Judiciary). Judicial Council review of Grant Application Proposals is governed by and subject to Rule 2-103 (Open and closed meetings) and Rule 2-104 (Recording meetings).

**Statement of the Rule:****(1) Definitions:**

(1)(A) "Grantor" means the organization providing the funds or the state agency distributing the funds to the courts.

(1)(B) "Grant Application Proposal" (GAP) is the form maintained in the Accounting Manual used to request authorization to pursue grant funding.

(1)(C) "Grant Administering Unit" (GAU) is the Council, committee, court, board of judges, department, or court employee that intends to apply for and administer the grant or grant funds.

(1)(D) "Grant Coordinator" is the individual responsible for facilitating, monitoring, and executing the assessment and administration of Grant Application Proposals ensuring compliance with this Rule and all other applicable state rules, statutes, and federal requirements. Accounting Manual Section 11-07.00(D)(1) further delineates roles and responsibilities.

(1)(E) “Grant Manager” is the individual identified by the GAU or Grant Coordinator to manage the grant for the GAU. Accounting Manual Section 11-07.00(D)(2) further delineates roles and responsibilities.

(1)(F) “Governing Bodies” with oversight of the grant process refer to Boards of Appellate, District, Justice, and Juvenile Court Judges, the Judicial Council, the Budget and Fiscal Management Committee, the Judicial Council Management Committee, the appropriate cCourt-level administrator and trial court executives, and any cCourt committee (standing or ad hoc) vested with authority to direct the affairs of implicated cCourt areas and operations. Judicial Council is the ultimate approving body for the grants process, preceded by the Budget and Fiscal Management Committee’s prior recommendation. Additional Governing Bodies are specific to the implicated cCourt areas. The Grant Coordinator will confirm and may assist the GAU/Grant Manager with identifying the appropriate Governing Bodies. Determinations concerning the exclusive authority reserved by the Supreme Court and Judicial Council are governed by Rule 3-105.

(1)(G) “Notice of Award” (NOA) is the document notifying the applicant that an award has been issued and that funds are available to be accepted. This document contains the terms and conditions of the grant.

(1)(H) “Quorum” is defined in Rule 1-101(1)(S) as “a majority of the members of the Judicial Council, Board, committee or other body.”

**(2) Purpose.** The purpose of the grants policy is to facilitate the prudent pursuit of grant funds that further the courts’ mission to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

**(3) Grant Application Proposals.** To apply for a grant, the person who would serve as the Grant Manager shall complete the steps set forth in the Accounting Manual Section 11-07.00(E)(2). The following requirements set forth in 11-07.00(E)(2) are incorporated into this Rule:

(3)(A) The Grant Coordinator, or their designee, must be notified of the applicant’s intent to apply a minimum of 8-weeks prior to the grant submission deadline established by the Grantor.

#### **(4) Assessment**

(4)(A) The Grant Coordinator will conduct a collaborative assessment of the incremental impacts the grant may have on the courts, with particular emphasis on IT Department resources. The Grant Coordinator must consider:

(4)(A)(i) the capacity of each impacted area to support the grant at current staffing levels; and

(4)(A)(ii) whether any incremental impacts would continue when grant funds cease.

(4)(B) Following the assessment, the GAU must incorporate adjustments identified by the Grant Coordinator in the Grant Application Proposal before circulating it for approval.

#### **(5) Approval of Grant Application Proposals**

(5)(A) The GAU and Grant Coordinator will present Grant Application Proposals to all Governing Bodies within the court that may benefit from or be impacted by the grant. All Grant Application Proposals must be reviewed and recommended by the Budget and Fiscal Management Committee ("BFMC") prior to review and vote by the Judicial Council. Grant Application Proposals that do not receive approval from a Governing Body will not be advanced.

(5)(B) No Grant Application Proposal or grant shall be approved unless it is first presented for approval in a regularly scheduled meeting of the Judicial Council as provided in the annual Judicial Council Meeting Schedule and in compliance with Rule 2-103 and Rule 2-104. "Urgent" requests (GAPs with less than an 8-week period between notice and application due date) must also comply with paragraph (5)(A) and may be considered only if the grant funds are non-federal, do not exceed \$150,000 inclusive of matching funds, and do not include the hiring of new employees. For an urgent request to be approved it must (1) secure a three-quarters supermajority vote among a Quorum of the Judicial Council in a regular meeting as provided in the Judicial Council Annual Meeting Schedule – ad hoc convenings will not be considered for the purpose of grant or Grant Application Proposal review, and (2) the urgency of the matter must not be precipitated by an "emergency of one's own causing."

(5)(C) The GAU must incorporate adjustments identified by a Governing Body in the Grant Application Proposal before it is circulated for re-consideration.

(5)(D) The Grant Coordinator will provide a synopsis of Grant Application Proposals that did not receive approval from a Governing Body to the BFMC.

(5)(E) When evaluating Grant Application Proposals, the BFMC and Judicial Council will consider the following:

(5)(E)(i) Does the grant contribute to accomplishing the mission of the courts?



(5)(E)(ii) Does the grant add value when compared with the burden on existing and future resources, both during the grant project completion phase and thereafter?

(5)(E)(iii) Does the grant provide measurable benefits to marginalized, minority, pro se, or similar under-served individuals or communities?

(5)(E)(iv) Does the grant assist the courts in solving problems and promoting innovations that cannot be accomplished with existing resources?

(5)(E)(v) Does the grant require actions or implementation of policy not in conformity with the mission of the courts or in conformity with policies previously established by the Judicial Council, Supreme Court, or the Utah Constitution?

(5)(E)(vi) Does the grant expose the courts to potential long-term, unfunded financial obligations?

(5)(F) If a Grant Application Proposal or grant implicates both the Supreme Court's and the Judicial Council's exclusive authority, the Supreme Court and the Judicial Council shall comply with Rule 3-105 before making application for the grant or accepting grant funds.

**(6) Submission and tracking of approved applications.** The tracking of approved submissions will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(5).

**(7) Notice of Award and accepting grant funds**

(7)(A) Upon receipt of a Notice of Award, the Grant Coordinator will ensure the notice is consistent with the Grant Application Proposal as approved by the Judicial Council.

(7)(B) In accordance with Utah Code, as detailed in the Accounting Manual Section 11-07.00 Exhibit A, if approved by the Judicial Council, the Grant Coordinator will either:

(7)(B)(i) notify the Executive Appropriations Committee (EAC);

(7)(B)(ii) obtain "review and recommendation" from the EAC; or

(7)(B)(iii) obtain approval from the Legislature.

If approval from the Legislature is required, the Grant Coordinator will ensure grant funds are not accepted until Legislative approval is obtained.

(7)(C) If not approved by the Judicial Council, no funds shall be accepted from the grant and the Grant Coordinator and Grant Manager will notify the Grantor of the Judicial Council's decision not to accept grant funds.

(7)(D) If grant funds may only be accepted with remedial steps, the Grant Coordinator and Grant Manager will communicate those steps in writing to the Grantor. The Grant Coordinator and Grant Manager will work with the State Court Administrator to ensure remediation has been accomplished and to determine whether the grant can be resubmitted for Judicial Council approval.

**(8) Grant implementation.** Grant implementation will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(7). The following requirements in 11-07.00(E)(7) are incorporated into this Rule:

**(8)(A) Judicial Council.** Grant funds shall only be used to hire permanent full-time or part-time employees if approved by the Judicial Council and in accordance with Utah Code.

**(8)(B) Judicial/Quasi-Judicial duties.** If impacted by the grant, the presiding judge(s) of each district shall supervise any judicial or quasi-judicial duties required by the grant.

**(9) Grant reporting requirements.** Grant reporting to the Grantor will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(8). The following requirements in 11-07.00(E)(8) are incorporated into this Rule:

**(9)(A) Judicial Council**

**(9)(A)(i)** Annually, the Grant Coordinator will complete a compliance self-assessment for all grants in the courts' active portfolio and report the results to the BFMC, Audit Director, and Judicial Council.

**(9)(A)(ii)** Quarterly, the Grant Coordinator will prepare a summary of:

**(9)(A)(ii)(1)** all existing court grants;

**(9)(A)(ii)(2)** a pipeline of potential future grants inclusive of all grants-in-progress under paragraphs (5) and (6); and

**(9)(A)(ii)(3)** a list of potential grants denied under paragraph (5)(A).

**(10) Changes in budget or scope**

**(10)(A)** Any changes to a grant must be documented with a grant amendment, whether or not the Grantor requires such documentation. Changes include, but are not limited to:

(10)(A)(i) revisions to the scope or objectives of the overall grant or any portion thereof;

(10)(A)(ii) transfers of funds between different cost categories with no overall budget impact;

(10)(A)(iii) extensions of time to complete grant spending;

(10)(A)(iv) revisions to the amount of funds needed; or

(10)(A)(v) changes in key personnel named in the grant.

(10)(B) Changes may not be implemented until Grantor approval is obtained in writing and executed between the parties.

(10)(C) The Grant Manager and Grant Coordinator will work together to prepare grant amendments.

(10)(D) Grant amendments described in paragraph (12)(B) must be approved by the Judicial Council. All other amendments must be reviewed by General Counsel staff and signed by the State Court Administrator or designee.

(11) Closing out the grant. Procedures to close out a grant will follow the steps set forth in the Accounting Manual Section 11-07.00(E)(10).

## (12) Renewing the grant

(12)(A) Judicial Council approval is required for grant renewal, even when there are no changes to scope, purpose, employees, matching, funding amount, or other areas, or when the prior assessment and/or Legislature approvals will not need to be revised. With appropriate documentation and the recommendation of BFMC, the Management Committee may review and confirm the grant renewal for Judicial Council approval in the consent calendar.

(12)(B) If a grant renewal involves a change that requires a new incremental assessment, or a change to the number of permanent full or part-time employees, or a grant amount requiring a different approval level than previously obtained, the Grant Coordinator will perform the steps in paragraphs (4) and (5). If the grant qualifies, the Grant Coordinator will resubmit the grant to the BFMC and Judicial Council for approval.

## (13) Letters of support and other non-financial collaborations

(13)(A) External partners pursuing their own grant opportunities ("principal applicant") may request the support of the courts as a stakeholder and explicit non-financial collaborator (NFC). Such collaborations are low-risk and provide documented reasonable assurances that no risk nor grant obligations will transfer to the courts directly or indirectly from the principal applicant. Letters of support or similar contributions to grant applications pursued by external partners must (1) be time-limited, (2) not entail the exchange of funds, (3) be non-binding, (4) not include the hiring of court employees, and (5) not commit or otherwise impose financial obligations on the courts.

(13)(A)(i) Agreements meeting all of the criteria in (13)(A) may be referred to the Grant Coordinator who will perform and document a risk assessment to be delivered to the State Court Administrator. If approved by the State Court Administrator or their designee, the Grant Coordinator shall retain a copy of the approval and notify the initiating party of the decision.

(13)(B) If approval is not granted, and assuming sufficient time to comply with this Rule, the State Court Administrator may recommend the request be modified to undergo the full process for Grant Application Proposals, or, withdrawn from all consideration.

(13)(C) All agreements approved or rejected in this process will be documented in the Grant Coordinator's monthly updates to the Budget and Fiscal Management Committee and Judicial Council.

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~~(1) Application process.~~

~~(1)(A) A person interested in applying for grant funds shall prepare a proposal including~~

~~(1)(A)(i) the issues to be addressed by the project,~~

~~(1)(A)(ii) an explanation of how the grant funds will contribute toward resolving the issues identified, and~~

~~(1)(A)(iii) an identification of possible funding sources for the continuing costs of the project when grant funds are no longer available.~~

~~(1)(B) If the applicant is seeking new federal funds or to participate in a new federal program, the proposal shall include:~~

~~(1)(B)(i) the number of additional permanent full time and part time employees needed to participate in the federal program; and~~

~~(1)(B)(ii) a list of any requirements the state must meet as a condition for receiving the federal funds or participating in the federal program.~~

~~(1)(C) Submission of the proposal.~~

~~(1)(C)(i) The proposal shall be reviewed by the court executives or their designees and the judges in the districts which will be affected by the project.~~

~~(1)(C)(ii) If the court executives or their designees and the presiding judges in the districts which will be affected by the project approve the proposal, the proposal shall be forwarded to the grant coordinator at the administrative office.~~

~~(1)(C)(iii) If the court executives or their designees and the presiding judges in the districts that the project will affect approve the proposal, but sufficient time to comply with paragraph (1)(D) prior to submission of the proposal to the funding source is not available, the proposal may be submitted simultaneously to the funding source and the grant coordinator at the administrative office.~~

~~(1)(D) Review of the proposal. The grant coordinator shall review the proposal with the Finance Manager and the court level administrator. This review must be complete prior to submission to the Board(s) of Judges.~~

~~(1)(E) Recommendation by the Board of Judges. The Board of Judges for affected courts must recommend to the Council that the grant proposal be pursued.~~

~~(1)(F) Approval by the Council. Any proposal to apply for grant funds must be approved by the Council.~~

~~(1)(G) Approval by the Legislature. The Judicial Council shall submit proposals to the Legislative Executive Appropriations Committee or to the Legislature as required by statute.~~

~~(1)(H) If the Council approves the proposal, the grant coordinator shall work with the requestor and the affected courts in seeking the grant funds. The administrative office shall constitute the designated agency for approving grant applications if such approval is required by the grant application.~~

~~(1)(I) If the Council or a Board of Judges does not approve the proposal, the proposal shall not be submitted to the funding source or, if already submitted to the funding source, the proposal shall be withdrawn.~~

~~(1)(J) No funds shall be accepted from a funding source until the proposal is approved.~~

~~(2) Administration of grant funds and projects.~~

~~(2)(A) The administrative office shall receive, administer and be accountable for all grant funds awarded to the courts and provide detailed budget reports to the Council upon request.~~

~~(2)(B) The administrative office shall name the project director for each grant. The project director may delegate the supervision of non-judicial daily operations and other non-judicial duties required by the grant. The presiding judges of the districts affected by the project shall supervise any judicial or quasi-judicial duties required by the grant.~~

~~(3) Grant applications by non-judicial branch applicants.~~

~~(3)(A) Endorsement of a grant application prepared by a non-judicial branch applicant may only be made by the Judicial Council.~~

~~(3)(B) Any grant application by a non-judicial branch applicant which contemplates participation of the courts or expenditures of court resources should be referred to the Judicial Council for review and endorsement. Judicial branch employees shall not participate in the preparation of a grant application by a non-judicial branch applicant without Judicial Council approval.~~

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

CJA 4-202.02

DRAFT: May 24, 2021 (out for public comment)  
June 4, 2021 (new proposal)**1 Rule 4-202.02. Records Classification.****2 Intent:**

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

**4 Applicability:**

5 This rule applies to the judicial branch.

**6 Statement of the Rule:**7 (1) **Presumption of Public Court Records.** Court records are public unless otherwise  
8 classified by this rule.9 (2) **Public Court Records.** Public court records include but are not limited to:

- 10 (2)(A) abstract of a citation that redacts all non-public information;
- 11 (2)(B) aggregate records without non-public information and without personal  
12 identifying information;
- 13 (2)(C) appellate filings, including briefs;
- 14 (2)(D) arrest warrants, but a court may restrict access before service;
- 15 (2)(E) audit reports;
- 16 (2)(F) case files;
- 17 (2)(G) committee reports after release by the Judicial Council or the court that  
18 requested the study;
- 19 (2)(H) contracts entered into by the judicial branch and records of compliance with  
20 the terms of a contract;
- 21 (2)(I) drafts that were never finalized but were relied upon in carrying out an  
22 action or policy;
- 23 (2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity  
24 of the exhibit, a fair trial or interests favoring closure;
- 25 (2)(K) financial records;
- 26 (2)(L) indexes approved by the Management Committee of the Judicial Council,  
27 including the following, in courts other than the juvenile court; an index may  
28 contain any other index information:
  - 29 (2)(L)(i) amount in controversy;
  - 30 (2)(L)(ii) attorney name;
  - 31 (2)(L)(iii) licensed paralegal practitioner name;
  - 32 (2)(L)(iv) case number;
  - 33 (2)(L)(v) case status;
  - 34 (2)(L)(vi) civil case type or criminal violation;
  - 35 (2)(L)(vii) civil judgment or criminal disposition;
  - 36 (2)(L)(viii) daily calendar;

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



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- (2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;
- (2)(GG) statistical data derived from public and non-public records but that disclose only public data; and
- (2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

**(3) Sealed Court Records.** The following court records are sealed:

- (3)(A) records in the following actions:
- (3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;
  - (3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed;
  - (3)(A)(iii) Section 76-7-304.5 – Consent required for abortions performed on minors; and
  - (3)(A)(iv) Section 78B-8-402 – Actions for disease testing;
- (3)(B) expunged records;
- (3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;
- (3)(D) records showing the identity of a confidential informant;
- (3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;
- (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
- (3)(G) records designated as sealed by rule of the Supreme Court;
- (3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings; and
- (3)(I) other records as ordered by the court under Rule 4-202.04.

**(4) Private Court Records.** The following court records are private:

- (4)(A) records in the following actions:
- (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

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- 116 (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check  
117 System database;
- 118 (4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the  
119 records are sealed;
- 120 (4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until  
121 the records are sealed; and
- 122 (4)(A)(v) cases initiated in the district court by filing an abstract of a  
123 juvenile court restitution judgment.
- 124 (4)(B) records in the following actions, except that the case history, judgments,  
125 orders, decrees, letters of appointment, and the record of public hearings  
126 are public records:
- 127 (4)(B)(i) Title 30, Husband and Wife, including qualified domestic  
128 relations orders, except that an action for consortium due  
129 to personal injury under Section 30-2-11 is public;
- 130 (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
- 131 (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability  
132 and their Property;
- 133 (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
- 134 (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
- 135 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody  
136 Jurisdiction and Enforcement Act;
- 137 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support  
138 Act;
- 139 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 140 (4)(B)(ix) an action to modify or enforce a judgment in any of the  
141 actions in this subparagraph (B);
- 142 (4)(C) records related to determinations of indigency;
- 143 (4)(D) an affidavit supporting a motion to waive fees;
- 144 (4)(E) aggregate records other than public aggregate records under subsection  
145 (2);
- 146 (4)(F) alternative dispute resolution records;
- 147 (4)(G) applications for accommodation under the Americans with Disabilities Act;
- 148 (4)(H) jail booking sheets;
- 149 (4)(I) citation, but an abstract of a citation that redacts all non-public information  
150 is public;
- 151 (4)(J) judgment information statement;
- 152 (4)(K) judicial review of final agency action under Utah Code Section 62A-4a-  
153 1009;
- 154 (4)(L) the following personal identifying information about a party: driver's license  
155 number, social security number, account description and number,  
156 password, identification number, maiden name and mother's maiden name,  
157 and similar personal identifying information;
- 158 (4)(M) the following personal identifying information about a person other than a  
159 party or a victim or witness of a crime: residential address, personal email  
160 address, personal telephone number; date of birth, driver's license number,

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- 161 social security number, account description and number, password,  
162 identification number, maiden name, mother's maiden name, and similar  
163 personal identifying information;  
164 (4)(N) medical, psychiatric, or psychological records;  
165 (4)(O) name of a minor, except that the name of a minor party is public in the  
166 following district and justice court proceedings:  
167 (4)(O)(i) name change of a minor;  
168 (4)(O)(ii) guardianship or conservatorship for a minor;  
169 (4)(O)(iii) felony, misdemeanor, or infraction when the minor is a party;  
170 (4)(O)(iv) protective orders and stalking injunctions; and  
171 (4)(O)(v) custody orders and decrees;  
172 (4)(P) nonresident violator notice of noncompliance;  
173 (4)(Q) personnel file of a current or former court personnel or applicant for  
174 employment;  
175 (4)(R) photograph, film, or video of a crime victim;  
176 (4)(S) record of a court hearing closed to the public or of a child's testimony taken  
177 under URCrP 15.5:  
178 (4)(S)(i) permanently if the hearing is not traditionally open to the  
179 public and public access does not play a significant positive  
180 role in the process; or  
181 (4)(S)(ii) if the hearing is traditionally open to the public, until the  
182 judge determines it is possible to release the record without  
183 prejudice to the interests that justified the closure;  
184 (4)(T) record submitted by a senior judge or court commissioner regarding  
185 performance evaluation and certification;  
186 (4)(U) record submitted for in camera review until its public availability is  
187 determined;  
188 (4)(V) reports of investigations by Child Protective Services;  
189 (4)(W) statement in support of petition to determine competency;  
190 (4)(~~XW~~) victim impact statements;  
191 (4)(~~YX~~) name of a prospective juror summoned to attend court, unless classified  
192 by the judge as safeguarded to protect the personal safety of the  
193 prospective juror or the prospective juror's family;  
194 (4)(~~ZY~~) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate  
195 Procedure, except briefs filed pursuant to court order;  
196 (4)(~~AAZ~~) records in a proceeding under Rule 60 of the Utah Rules of Appellate  
197 Procedure; and  
198 (4)(~~BBAA~~) other records as ordered by the court under Rule 4-202.04.  
199  
200 (5) **Protected Court Records.** The following court records are protected:  
201 (5)(A) attorney's work product, including the mental impressions or legal theories  
202 of an attorney or other representative of the courts concerning litigation,  
203 privileged communication between the courts and an attorney representing,  
204 retained, or employed by the courts, and records prepared solely in

Commented [KW1]: July public comment

Commented [KW2]: New proposed amendment

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- 205 anticipation of litigation or a judicial, quasi-judicial, or administrative  
206 proceeding;
- 207 (5)(B) records that are subject to the attorney client privilege;
- 208 (5)(C) bids or proposals until the deadline for submitting them has closed;
- 209 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed  
210 legislation before issuance of the final recommendations in these areas;
- 211 (5)(E) budget recommendations, legislative proposals, and policy statements, that  
212 if disclosed would reveal the court's contemplated policies or contemplated  
213 courses of action;
- 214 (5)(F) court security plans;
- 215 (5)(G) investigation and analysis of loss covered by the risk management fund;
- 216 (5)(H) memorandum prepared by staff for a member of any body charged by law  
217 with performing a judicial function and used in the decision-making process;
- 218 (5)(I) confidential business records under Utah Code Section 63G-2-309;
- 219 (5)(J) record created or maintained for civil, criminal, or administrative  
220 enforcement purposes, audit or discipline purposes, or licensing,  
221 certification or registration purposes, if the record reasonably could be  
222 expected to:
- 223 (5)(J)(i) interfere with an investigation;
- 224 (5)(J)(ii) interfere with a fair hearing or trial;
- 225 (5)(J)(iii) disclose the identity of a confidential source; or
- 226 (5)(J)(iv) concern the security of a court facility;
- 227 (5)(K) record identifying property under consideration for sale or acquisition by the  
228 court or its appraised or estimated value unless the information has been  
229 disclosed to someone not under a duty of confidentiality to the courts;
- 230 (5)(L) record that would reveal the contents of settlement negotiations other than  
231 the final settlement agreement;
- 232 (5)(M) record the disclosure of which would impair governmental procurement or  
233 give an unfair advantage to any person;
- 234 (5)(N) record the disclosure of which would interfere with supervision of an  
235 offender's incarceration, probation, or parole;
- 236 (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- 237 (5)(P) strategy about collective bargaining or pending litigation;
- 238 (5)(Q) test questions and answers;
- 239 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 240 (5)(S) record of a Children's Justice Center investigative interview before the  
241 conclusion of any legal proceedings;
- 242 (5)(T) presentence investigation report;
- 243 (5)(U) except for those filed with the court, records maintained and prepared by  
244 juvenile probation; and
- 245 (5)(V) other records as ordered by the court under Rule 4-202.04.
- 246
- 247 **(6) Juvenile Court Social Records.** The following are juvenile court social records:
- 248 (6)(A) correspondence relating to juvenile social records;

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- 249 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations,  
250 substance abuse evaluations, domestic violence evaluations;  
251 (6)(C) medical, psychological, psychiatric evaluations;  
252 (6)(D) pre-disposition and social summary reports;  
253 (6)(E) probation agency and institutional reports or evaluations;  
254 (6)(F) referral reports;  
255 (6)(G) report of preliminary inquiries; and  
256 (6)(H) treatment or service plans.  
257
- 258 **(7) Juvenile Court Legal Records.** The following are juvenile court legal records:  
259 (7)(A) accounting records;  
260 (7)(B) discovery filed with the court;  
261 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes,  
262 findings, orders, decrees;  
263 (7)(D) name of a party or minor;  
264 (7)(E) record of a court hearing;  
265 (7)(F) referral and offense histories  
266 (7)(G) and any other juvenile court record regarding a minor that is not designated  
267 as a social record.  
268
- 269 **(8) Safeguarded Court Records.** The following court records are safeguarded:  
270 (8)(A) upon request, location information, contact information, and identity  
271 information other than name of a petitioner and other persons to be  
272 protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions  
273 or Title 78B, Chapter 7, Protective Orders;  
274 (8)(B) upon request, location information, contact information and identity  
275 information other than name of a party or the party's child after showing by  
276 affidavit that the health, safety, or liberty of the party or child would be  
277 jeopardized by disclosure in a proceeding under Title 78B, Chapter 13,  
278 Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B,  
279 Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15,  
280 Utah Uniform Parentage Act;  
281 (8)(C) location information, contact information, and identity information of  
282 prospective jurors on the master jury list or the qualified jury list;  
283 (8)(D) location information, contact information, and identity information other than  
284 name of a prospective juror summoned to attend court;  
285 (8)(E) the following information about a victim or witness of a crime:  
286 (8)(E)(i) business and personal address, email address, telephone  
287 number, and similar information from which the person can  
288 be located or contacted;  
289 (8)(E)(ii) date of birth, driver's license number, social security  
290 number, account description and number, password,  
291 identification number, maiden name, mother's maiden  
292 name, and similar personal identifying information.  
293

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DRAFT: May 24, 2021 (out for public comment)  
June 4, 2021 (new proposal)|294 Effective ~~December 5~~May/November 1, 2021

**Rule 4-208. Automatic expungement of cases****Intent:**

The intent of this rule is to govern the Administrative Office of the Court's development and implementation of an automated expungement process.

**Applicability:**

This rule applies to cases in district and justice courts.

**Statement of the Rule:****(1) Definitions**

(1)(A) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety.

(1)(B) "Clean slate eligible case" means the same as defined in Utah Code §77-40-102.

(1)(C) "Conviction" means a judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(1)(D) "Expunge" means to seal or otherwise restrict access to the individual's record when the record includes a criminal investigation, detention, arrest, or conviction.

**(2) Automated expungement process**

(2)(A) The Administrative Office of the Courts shall develop an automated process for expunging eligible court records.

(2)(B) Automated processes must comply with the requirements outlined in the Utah Rules of Criminal Procedure and the Utah Expungement Act.

(2)(C) All automated expungement processes developed by the Administrative Office of the Courts shall be approved by the Utah Judicial Council.

**(3) Standing orders and orders of expungement**

(3)(A) The presiding officer of the Judicial Council may appoint a district court presiding judge as a signing judge for automatic expungements in all district courts within the presiding judge's district in accordance with Rule 3-108.

(3)(B) A justice court presiding judge may act as a signing judge for automatic expungements in all justice courts within the presiding judge's district. The length of the assignment must coincide with the judge's term as a presiding judge.

(3)(C) If the district or justice court presiding judge determines that the requirements under the Utah Rules of Criminal Procedure and this rule have been met, the presiding judge shall issue a standing order authorizing the Administrative Office of the Courts to prepare and automatically affix the presiding judge's judicial

37                    signature to orders of expungements issued in relation to cases from that judicial  
38                    district.

39            (3)(D)   The form and content of automated orders of expungement must be approved by  
40                    the Utah Judicial Council.

41    **(4)   Notice of action taken**

42            (4)(A)   The Administrative Office the Courts shall send notice that an order of  
43                    expungement has been issued in accordance with the Utah Rules of Criminal  
44                    Procedure.

45  
46    *Effective May/November 1, 20*