JUDICIAL COUNCIL MEETING

AGENDA
Monday, May 20, 2013
Judicial Council Room
Matheson Courthouse
Salt Lake City, Utah

Chief Justice Matthew B. Durrant, Presiding

1.	9:00 a.m.	Welcome & Approval of Minutes . . . . . Chief Justice Matthew B. Durrant (Tab 1 - Action)
2.	9:05 a.m.	Chair's Report. . . . . Chief Justice Matthew B. Durrant
3.	9:15 a.m.	Administrator's Report. . . . . .Daniel J. Becker
4.	9:30 a.m.	Reports: Management Committee. . . . . .Chief Justice Matthew B. Durrant Liaison Committee. . . . . .Justice Jill Parrish Policy and Planning . . . . . .Judge Greg Orme Bar Commission. . . . . .John Lund, esq. (Tab 2 - Information)
5.	9:40 a.m.	Judicial Performance Evaluation Commission Update. . . . . Joanne Slotnik (Information)
6.	10:00 a.m.	Judicial Conduct Commission Report. . . . . .Colin Winchester (Information)
7.	10:20 a.m.	Rules for Consideration. . . . . Tim Shea -Rules for Expedited Date -Final Action -Other Proposed Rules (Tab 3 - Action)
	10:35 a.m.	Break
8.	10:45 a.m.	Commissioner Compensation. . . . . Rob Parkes (Tab 4 - Action)
9.	10:50 a.m.	Ethics Advisory Opinion Follow-up. . . . . .Brent Johnson (Tab 5 - Action) Judge David Connors
10.	11:10 a.m.	Uniform Fine and Bail Committee Update. . . . . .Judge David Connors (Tab 6 - Action)

11.	11:30 a.m.	Initiative on Utah Children in Foster Care. . . . . (Tab 7 - Information)	.Katie Gregory
12.	11:50 a.m.	Board of Juvenile Court Judges Update. . . . . (Information)	.Judge Mark May Katie Gregory
13.	12:10 p.m.	Online Court Assistance Program (OCAP) Enhancements. . . . (Information)	.Kim Allard
14.	12:30 p.m.	Uintah/Huntsville Justice Court Interlocal Agreement. . . (Tab 8 – Action)	.Daniel J. Becker
15.	12:35 p.m.	Executive Session	
	12:40 p.m.	Lunch	
16.	1:10 p.m.	Adjourn	

Consent Calendar

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

1. Committee Appointment (Tab 9)	Liz Knight Tim Shea
2. Rules for Final Comment (Tab 10)	Tim Shea
3. HR Policy Approval (Tab 11)	Rob Parkes

TAB 1

JUDICIAL COUNCIL MEETING

Minutes
Monday, April 22, 2013
Matheson Courthouse
Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Judith Atherton
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendan McCullagh
Hon. David Mortensen
Hon. Gregory Orme
Hon. Reed Parkin
Hon. John Sandberg
Hon. Larry Steele
John Lund, esq.

EXCUSED:

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Diane Abegglen
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Nancy Volmer
Derek Byrne
Tom Langhorne
Ron Bowmaster
Jessica Van Buren
Mary Jane Ciccarello
Karolina Abuzyarova
Michaelle Jones

GUESTS:
Judge David Marx
Judge John Baxter
Marissa Lang, SL Tribune
Judge John Kennedy
Ukrainian Visitors:
Ivan Boychenyvk
Dmytro Kravets
Victoriya Lisnyak
Tetyana Ostapchuk
Oksana Remetski
Bohdan Yarema
Sergei Uhadov - Interpreter

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

Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to a group of Ukrainian judges and court officials. Judge John Kennedy introduced the visitors. Chief Justice Durrant provided background information as to the role of the Judicial Council as the governing body of the Utah Court system.

Motion: Judge Maughan moved to approve the minutes from the March 15, 2013 Judicial Council meeting. Judge Sandberg seconded the motion, and it passed unanimously.

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

Chief Justice Durrant reported on the following:

He recently spoke at the Justice Court Judges Conference in St George and at the Juvenile Court Conference in Midway.

The Council's JPEC Workgroup met with the Judicial Performance Evaluation Commission at their April meeting. Mr. Schwermer will provide a more detailed report later on the agenda.

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

Mr. Becker reported on the following items:

Juvenile Court Administrator. Ms. Lisa-Michele Church has submitted her resignation, effective April 30, 2013. The recruitment process has begun, and Mr. Becker has met with the Board of Juvenile Court Judges to discuss the process in filling the vacancy with them. Mr. Ray Wahl will assume the duties of the Juvenile Court Administrator until the vacancy has been filled.

Judicial Vacancies. Judge Michael Lyon has announced his upcoming retirement, effective September 1, 2013.

Mr. Kymber Housely, the Governor's appointment to fill the First District vacancy, has withdrawn his name for consideration.

Mr. Becker mentioned that there are six judicial vacancies in the process of being filled to include: 1) 1st District, 2) 2nd District, 3) 3rd Juvenile, 4) 3rd District, 5) 8th District, and 6) 8th Juvenile.

GAL Director. Ms. Elizabeth Knight has been hired to fill the vacancy for the GAL Director. She will begin working for the courts on April 29. Mr. Becker provided background of her work experience.

Standing Committee on Children and Family Law (SCCFL). Senator Weiler has been appointed as the Senate representative to the committee.

2017 Court Technology Conference. Salt Lake City has been selected to host the 2017 court technology conference. This conference draws a large number of national and international attendees.

SB 77 – Availability of Government Information. This bill requires certain public bodies to post minutes and audio recordings of meetings on the Utah Public Notice Website, and it modifies the manner and time of making minutes public. Policy and Planning will review the legislation and address the necessary rule changes. This bill becomes effective in May, and the recording of the May Council meeting will be posted to the Public Notice Website.

4. COMMITTEE REPORTS:

Management Committee Report:

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

Liaison Committee Report:
No meeting was held in April.

Policy and Planning Meeting:
No meeting was held in April.

Bar Commission Report:
Mr. Lund reported on the following:
The Commission has not met since their March meeting.
He highlighted the Bar's election results to include: 1) Mr. Curtis Jensen, President-elect, will serve as the Bar's president for the 2013-2014 year, 2) Mr. James Gilson was selected to serve as the President-elect of the Bar, 3) Mr. Kenyan Dove was selected as the Second District representative to the Bar Commission, 4) Ms. Susanne Gustin and Mr. John Lund were selected as Third District representatives to the Bar Commission.

5. BOARD OF JUSTICE COURT JUDGES UPDATE: (Judge David Marx)

Chief Justice Durrant welcomed Judge Marx to the meeting.

Judge Marx provided an update to the Council on the activities of the Board of Justice Court Judges. He highlighted the following in his update: 1) completion of the judges annual conference which included small claims training and leadership and mentoring training, 2) the first of two clerks conferences is to be held this week, 3) revised judicial weighted workload formula, 4) approaching a one-year benchmark of recorded proceedings in the justice courts, 5) outreach awareness, 6) compliance with private provider opinion, 7) JPEC and the justice courts, 8) reviewing ways to educate judges and advance evidenced-based sentencing, 9) advancing paperless systems in the justice courts, and 10) defining/advancing judicial independence at the justice court level.

Judge Marx was thanked for all he has accomplished, on behalf of the justice courts, as the Board chair.

It was noted that Judge Marx has been selected to fill the vacancy on the Judicial Council in October when Judge McCullagh's second term has expired.

6. APPOINTMENT OF SENIOR JUDGES TO COMMITTEES: (Tim Shea)

On behalf of the Court Interpreter Committee, Mr. Shea reported that Judge Noonan has stepped down as the Juvenile Court judge representative. After recruitment efforts were extended to the juvenile judges, no interest was expressed. A juvenile senior judge has agreed to fill the vacancy, if approved by the Council. Mr. Shea noted that the Board of Juvenile Court Judges has approved the appointment of a juvenile senior judge to the Committee.

The matter was discussed with the Management Committee at their April meeting. The Management Committee deferred the matter to the Council for discussion and action.

Discussion took place regarding the precedent of appointing a senior judge to serve on a standing committee.

Motion: Judge Maughan moved to send the matter back to the Board of Juvenile Court Judges for additional recruitment efforts to fill the vacancy on the Court Interpreter Committee for a juvenile judge representative. Justice Parrish seconded the motion, and it passed unanimously.

7. COURT INTERPRETER – INCREASE IN HOURLY FEE: (Tim Shea)

Mr. Shea requested approval of a one percent increase of the hourly fee for court interpreters to coincide with the one percent salary increase approved by the legislature for state employees. The funding for the increase would come from the Juror/Witness/Interpreter Fund.

Motion: Judge Maughan moved to approve the proposed interpreter fee schedule for FY 2014. Judge Hornak seconded the motion, and it passed unanimously.

8. MANDATORY E-FILING REPORT: (Ron Bowmaster and Debra Moore)

Ms. Moore and Mr. Bowmaster were welcomed to the meeting.

Mr. Bowmaster highlighted the following e-filing dates in his update: 1) mandatory civil/ domestic e-filing, effective April 1, 2013; 2) mandatory probate e-filing, effective July 1, 2013; 3) general civil e-filing, originally started in March 2010; and 4) domestic/probate/small claims e-filing, became available in January 2013.

In anticipation of the mandatory e-filing date, the following communication was provided to prepare for the move: 1) notices were printed in the Bar Journal, 2) exhibition booths set up at various Bar Conferences, 3) publication of brochures and best practice guides, and 4) statewide and local training sessions were held.

E-filing status data was provided to include: 1) number of attorneys registered to file electronically, 2) percentage of civil case filings, 3) help desk support, 4) number of criminal electronic case filings, and 5) noted upcoming changes to the signature application, formatting of documents, and OCAP implementation and e-filing capability.

Ms. Moore highlighted the following in her update: 1) the move to mandatory e-filing transitioned smoothly, 2) development of Phase 2 of the judicial workspace application is underway, 3) statistics on the hearing preparation and management of the judicial workspace application was provided, 4) signing application enhancements are being addressed, 5) Rich Text Format (RTF) document formatting issues being addressed, and 6) all additional/upgraded equipment requested by the districts has been delivered and installed.

Discussion took place. Questions were asked relative to the Appellate Courts Panel Management System and the Juvenile Court e-filing plan. Clarification was provided.

Gratitude was expressed to all court staff involved with the move to mandatory e-filing and its smooth transition.

Mr. Becker noted that a review of contract sites and the type of services provided at the contract sites due to the impact of e-filing is forthcoming. More specific recommendations relative to this matter will be provided at a future meeting.

9. REPORT ON EFFORTS TO IMPROVE GUARDIANSHIP AND CONSERVATORSHIP APPOINTMENTS: (Tim Shea)

Mr. Shea provided an update to the Council on the courts' efforts to improve guardianship and conservatorship appointments. Background information was provided to what has taken place. Mr. Shea highlighted the following in his report: 1) recognized and thanked Judge Harmond for staffing the ad hoc committee; 2) the work of staff in developing web pages, forms, bench books, and reference manuals; 3) development of the Court Visitor Program being staffed by Ms. Karolina Abuzyarova, Program Coordinator, and Ms. Michaelle Jones, Volunteer

Coordinator; 4) passing of HB 327 – Probate Amendments which includes a definition of incapacity, requires nationally recognized credentials for qualification as a professional guardian, and express recognition of the judge's authority to direct the inquiries of a court; and 5) establishment of a workgroup by the Board of District Court judges to examine the role of the court in trying to re-establish contact with guardians and conservators with whom the court has lost contact.

Discussion took place.

Mr. Shea was thanked for all he has done with the guardianship and conservatorship matters.

10. JPEC UPDATE: (Rick Schwermer)

Mr. Schwermer provided an update to the Council on the April JPEC Meeting, attended by the Council's JPEC workgroup.

He highlighted the following in his update: 1) discussion on the integrity of the survey data and methodology for judges up for retention in 2014, 2) concerns regarding the judicial performance evaluation process, 3) comments provided by Commission members, and 4) a response, in written form, will be provided by the Commission chair.

Discussion took place.

11. FY 14 OPERATIONAL BUDGET UPDATE: (Ray Wahl and Daniel J. Becker)

The recommendations for the FY 14 operational budget for the courts were reviewed by Mr. Wahl and Mr. Becker.

The following ongoing general fund recommendations were highlighted: 1) drug court funding, 2) data processing e-filing programming funding, 3) transfer from contracts line item for Utah Code Annotated funding, 4) VOIP budget savings, 5) fund one time-limited law clerk, 6) juvenile law clerk, fund 50% from ongoing funds, 7) clerical restructuring plan – final installment - clerical increase, 8) career track, 9) market comparability adjustments, and 10) legislative actions requiring funding.

The recommendations for one-time funding were reviewed.

Motion: Judge Steele moved to approve the FY 14 operational budget for the courts as proposed. Judge Dawson seconded the motion, and it passed unanimously.

12. RESOURCES FOR SELF-REPRESENTED PARTIES COMMITTEE UPDATE: (Judge John Baxter and Tim Shea)

Chief Justice Durrant welcomed Judge Baxter to the meeting.

Judge Baxter provided an update to the Council on behalf of the Resources for Self-Represented Parties Committee.

The Self-Help Center functions as a virtual center providing services through the following channels: 1) by phone, 2) by mail, 3) through texting, 4) and online.

Judge Baxter provided background information on the Self-Help Center. He reminded the Council that the center was developed five years ago starting in two judicial districts. The center is currently staff by Ms. Mary Jane Ciccarello and six part-time attorneys.

Training on the use of the Self-Help Center, awareness of the Self-Help Center as a resource, and development and posting of available forms on the court's website continues.

Judge Baxter highlighted the following numbers reflective of the contacts using the center: 1) in 2008, 830 contacts; 2) in 2013, 11,113 contacts, and 3) an average of 77 contacts per day.

Mr. Becker noted a public outreach meeting was held last week at the Calvary Baptist Church, and Ms. Ciccarello presented on the Self-Help Center.

Judge Baxter was thanked for his update.

13. SENIOR JUDGE CERTIFICATION: (Tim Shea)

Judge Atherton left the meeting at this time.

Judge Judith Atherton has applied to be appointed as an active senior judge. Mr. Shea reported that Judge Atherton meets the minimum performance standards.

Motion: Judge Maughan moved to forward the recommendations, on behalf of the Council, to the Supreme Court to certify Judge Atherton for appointment as an active senior judge. Judge McCullagh seconded the motion, and it passed unanimously.

14. EXECUTIVE SESSION

An executive session as not needed at this time.

15. ADJOURN

The meeting was adjourned.

TAB 3

Rules for Expedited Date

Administrative Office of the Courts

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

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

MEMORANDUM

To: Judicial Council
From: Tim Shea
Date: May 6, 2013
Re: Rules for expedited effective date

The Policy and Planning Committee recommends that the following rules be published for comment. The committee also recommends that, under Rule 2-205, they be made effective on the dates indicated. All of the amendments are intended to implement legislation effective on those dates.

Rule summary

CJA 02-0103. Open and closed meetings. Technical changes. Imposes on the Judicial Council the new requirements imposed on public bodies by SB 77. Should be effective May 14.

CJA 02-0104. Recording meetings. Requires additional public records to be published on the Utah Public Notice Website. Imposes on the Judicial Council the new requirements imposed on public bodies by SB 77. Should be effective May 14.

CJA 04-0906. Guardian ad litem program. Implements the requirements of Section 78A-2-228 for private guardian ad litem attorneys. Should be effective July 1.

CJA 06-0401. Domestic relations commissioners. Includes dating violence protective orders, authorized by HB 50, within the authority of court commissioners. Should be effective May 14.

Encl. Draft rules

Rule 2-103. Open and closed meetings.

Intent:

To establish the Council's responsibility for providing public notice of its meetings and to ensure the opportunity for public attendance at Council meetings.

To establish procedures consistent with the philosophy of the Utah Open and Public Meetings Act.

To provide the Council with sufficient flexibility to close meetings when discussing matters of a sensitive nature.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) Definitions. As used in this rule "meeting" means the gathering of a quorum of the Council, whether in person or by means of electronic communication, for the purpose of discussing or acting upon any matter over which the Council has jurisdiction, but does not include a chance or social meeting of Council members.

(2) Public notice of meetings.

(2)(A) After the Council has set its annual meeting schedule, the administrative office of the courts shall publish on the court's website and on the Utah Public Notice Website the date, time and place of the meetings ~~on the courts' website~~. At least 24 hours before each meeting, the administrative office of the courts shall post on the websites the meeting agenda and notify at least one newspaper of general circulation within the state of the postings. The administrative office of the courts shall notify a media agency of the postings by email upon request for routine notice. The Council may address a matter not on the meeting agenda but will take no final action on the matter.

(2)(B) When, due to unforeseen circumstances, it is necessary for the Council to consider matters of an urgent nature, the requirement of public notice may be suspended and the best notice practicable given. No such meeting of the Council shall be held unless:

(2)(B)(i) an attempt has been made to notify all members;

(2)(B)(ii) at least a quorum is present; and

(2)(B)(iii) a majority of those present vote to hold the meeting.

(3) Open meetings. Meetings of the Council are open to the public unless closed as provided in this rule.

(4) Reasons for closed meetings.

A closed meeting of the Council may be held for discussions regarding any of the following:

(4)(A) the character, professional competence, or physical or mental health of an individual;

(4)(B) collective bargaining or litigation;

(4)(C) the purchase, exchange or lease of real property if public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D) the sale of real property if:

(4)(D)(i) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the Council from completing the transaction on the best possible terms;

(4)(D)(ii) the Council has previously given public notice that the property would be offered for sale; and

(4)(D)(iii) the terms of the sale are publicly disclosed before the Council approves the sale;

(4)(E) deployment of security personnel or devices;

(4)(F) allegations of criminal misconduct; or

(4)(G) consideration of a private, protected, sealed, juvenile court social or juvenile court legal record as defined in Rule 4-202.02.

(5) Procedure for closing a meeting.

(5)(A) A closed meeting may be held only upon the affirmative vote of two-thirds of the members present at an open meeting for which public notice is given, provided a quorum is present.

(5)(B) The recording and minutes otherwise required by Rule 2-104 shall not be made if a meeting is closed to discuss the character, competence, or physical or mental health of an individual or to discuss the deployment of security personnel or devices. The presiding officer shall sign a sworn statement, which is a public record, affirming that the sole purpose for closing the meeting is to discuss the character, competence, or physical or mental health of an individual or the deployment of security personnel, devices, or systems.

(6) Limit on actions at a closed meeting. No contract, appointment, rule or resolution may be approved at a closed meeting. A contract, appointment, rule or resolution approved at an open meeting may be based upon discussions had at a closed meeting.

(7) Limit on discussions outside of closed meeting. No one who attends a closed meeting may disclose information discussed or materials distributed outside of the closed meeting except with

(A) others who participated in the closed meeting, and

(B) a member of the Judicial Council.

(8) Right of removal. All or any part of an open meeting may be recorded by any person in attendance, provided the recording does not interfere with the conduct of the meeting. The Council may order the removal of any person who disrupts a meeting.

(9) The administrative office of the courts shall annually train the members of the Council on the requirements of this rule and of Rule 2-104.

Rule 2-104. Recording meetings.

Intent:

To provide a formal method for memorializing Council meetings.

To regulate public access to such records.

Applicability:

This rule shall apply to all meetings of the Council.

Statement of the Rule:

(1) Except as provided in Rule 2-103(5)(B), the administrative office of the courts shall make an audio recording of all open and closed Council meetings, and the administrative office of the courts shall prepare minutes of all open Council meetings. The recording is a verbatim record of what is said during the meeting. The minutes shall include:

(1)(A) the date, time, and place of the meeting;

(1)(B) the names of members present, in person or by electronic communication, the names of members absent and the names of staff and guests who testify to the Council;

(1)(C) the substance of all matters proposed, discussed, or decided;

(1)(D) the substance of the testimony of guests and the reports of staff or a summary reference to such testimony or report if a copy thereof is filed with the minutes;

(1)(E) a record of the vote taken on any question, and, if the vote is a roll call vote, a record of the vote of individual members by name;

(1)(F) the reason for holding a closed meeting; and

(1)(G) any other information that any member requests be entered in the minutes.

(2)(A) The audio recording of a closed meeting is a protected record. The audio recording of an open meeting is a public record. Minutes of an open meeting awaiting approval by the Council are a public record. The approved minutes of an open meeting are a public record.

(2)(B) ~~The recording of an open meeting shall be available within three days after the meeting to which it pertains.~~ Minutes awaiting approval by the Council shall be clearly identified as "unapproved" and made available within ~~a reasonable time~~ 30 days after the meeting to which they pertain. ~~After approval by the Council, the minutes shall~~

~~be posted on the courts' website.~~ The approved minutes of an open meeting are a permanent record. The audio recording of a public meeting may be destroyed 90 days after the Council approves the minutes. The audio recording of a closed meeting may be destroyed 90 days after the matter to which it pertains is moot.

(3) The administrative office of the courts shall post on the Utah Public Notice Website:

(3)(A) the audio recording of a public meeting within three days after the meeting;

(3)(B) public records distributed at a public meeting, including public records distributed to Council members before the meeting, within three days after the meeting; and

(3)(C) the approved minutes of a meeting within three days after approval.

Rule 4-906. Guardian ad litem program.

Intent:

To establish the responsibilities of the Guardian ad Litem Oversight Committee established in Rule 1-205.

To establish the policy and procedures for the management of the guardian ad litem program.

To establish responsibility for management of the program.

To establish the policy and procedures for the selection of guardians ad litem.

To establish the policy and procedures for payment for guardian ad litem services.

To establish the policy and procedures for complaints regarding guardians ad litem and volunteers.

Applicability:

This rule shall apply to the management of the guardian ad litem program.

This rule does not affect the authority of the Utah State Bar to discipline a guardian ad litem.

Statement of the Rule:

(1) Guardian ad Litem Oversight Committee. The Committee shall:

(1)(A) develop and monitor policies of the Office of Guardian ad Litem to:

(1)(A)(i) ensure the independent and professional representation of a child-client and the child's best interest; and

(1)(A)(ii) ensure compliance with federal and state statutes, rules and case law;

(1)(B) recommend rules of administration and procedure to the Judicial Council and Supreme Court;

(1)(C) select the Director of the Office of Guardian ad Litem in consultation with the State Court Administrator;

(1)(D) develop a performance plan for the Director;

(1)(E) monitor the Office's caseload and recommend to the Judicial Council adequate staffing of guardians ad litem and staff;

(1)(F) develop standards and procedures for hearing and deciding complaints and appeals of complaints; and

(1)(G) hear and decide complaints and appeals of complaints as provided in this rule.

(2) Qualifications of the director. The Director shall have the qualifications provided by the Utah Code.

(3) Responsibilities of the director. In addition to responsibilities under the Utah Code, the Director shall have the following responsibilities.

(3)(A) Manage the Office of Guardian ad Litem to ensure that minors who have been appointed a guardian ad litem by the court receive qualified guardian ad litem services.

(3)(B) Develop the budget appropriation request to the legislature for the guardian ad litem program.

(3)(C) Coordinate the appointments of guardians ad litem among different levels of courts.

(3)(D) Monitor the services of the guardians ad litem, staff and volunteers by regularly consulting with users and observers of guardian ad litem services, including judges, court executives and clerks, and by requiring the submission of appropriate written reports from the guardians ad litem.

(3)(E) Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract.

(3)(F) Select guardians ad litem and staff for employment as provided in this rule. Select volunteers. Coordinate appointment of conflict counsel.

(3)(G) Supervise, evaluate, and discipline guardians ad litem and staff employed by the courts and volunteers. Supervise and evaluate the quality of service provided by guardians ad litem under contract with the court.

(3)(H) Monitor and report to the Committee guardian ad litem, staff and volunteer compliance with federal and state statutes, rules and case law.

(3)(I) Prepare and submit to the Committee in August an annual report regarding the development, policy, and management of the guardian ad litem program and the training and evaluation of guardians ad litem, staff and volunteers. The Committee may amend the report prior to release to the Legislative Interim Human Services Committee.

(4) Qualification and responsibilities of guardian ad litem. A guardian ad litem shall be admitted to the practice of law in Utah and shall demonstrate experience and interest in the applicable law and procedures. The guardian ad litem shall have the responsibilities established by the Utah Code.

(5) Selection of guardian ad litem for employment.

(5)(A) A guardian ad litem employed by the Administrative Office of the Courts is an at-will employee subject to dismissal by the Director with or without cause.

(5)(B) A guardian ad litem employed by the Administrative Office of the Courts shall be selected by the Director. Prior to the Director making a selection, a panel shall interview applicants and make hiring recommendations to the Director. The interview panel shall consist of the Director (or Director's designee) and two or more of the following persons:

(5)(B)(i) the managing attorney of the local guardian ad litem office;

(5)(B)(ii) the trial court executive of the district court or juvenile court;

(5)(B)(iii) a member of the Committee;

(5)(B)(iv) a member of the Utah State Bar Association selected by the Director; or

(5)(B)(v) a member selected by the Director.

(6) Conflicts of interest and disqualification of guardian ad litem.

(6)(A) In cases where a guardian ad litem has a conflict of interest, the guardian ad litem shall declare the conflict and request that the court appoint a conflict guardian ad litem in the matter. Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the guardian ad litem be disqualified from further service in that case. Upon a finding that a conflict of interest exists, the court shall relieve the guardian ad litem from further duties in that case and appoint a conflict guardian ad litem.

(6)(B) The Administrative Office of the Courts may contract with attorneys to provide conflict guardian ad litem services.

(6)(C) If the conflict guardian ad litem is arranged on a case-by-case basis, the Court shall use the order form approved by the Council. The Order shall include a list of the duties of a guardian ad litem. The court shall distribute the Order as follows: original to

the case file and one copy each to: the appointed conflict guardian ad litem, the guardian ad litem, all parties of record, the parents, guardians or custodians of the child(ren), the court executive and the Director.

(6)(D) A conflict guardian ad litem's compensation shall not exceed $50 per hour or $1000 per case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extend the payment limit upon request from the conflict guardian ad litem. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most guardian ad litem assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional $400.

(7) Staff and Volunteers.

(7)(A) The Director shall develop a strong volunteer component to the guardian ad litem program and provide support for volunteer solicitation, screening and training. Staff and volunteers shall have the responsibilities established by the Utah Code.

(7)(B) Training for staff and volunteers shall be conducted under the supervision of the attorney guardian ad litem with administrative support provided by the Director. Staff and volunteers shall receive training in the areas of child abuse, child psychology, juvenile and district court procedures and local child welfare agency procedures. Staff and volunteers shall be trained in the guidelines established by the National Court Appointed Special Advocate Association.

(8) Private guardians ad litem.

(8)(A) The Director shall maintain a list of private attorney guardians ad litem qualified for appointment. ~~The Director shall provide the list to district court judges upon request.~~

(8)(B) To be included on the list ~~a guardian~~ of eligible private attorney guardians ad litem, the applicant shall:

~~(8)(B)(i)~~ apply for ~~inclusion;~~eligible private attorney guardian status to the Utah Office of Guardian ad Litem and provide the following documentation:

~~(8)(B)(ii) be~~(8)(B)(i) that they are a member in good standing with the Utah State Bar;

~~(8)(B)(iii) file permission and fingerprints for screening by the FBI and BCI;~~(8)(B)(ii) a BCI criminal history report;

~~(8)(B)(iv) be screened against the~~(8)(B)(iii) a DCFS Child Abuse Data Base report (and ~~the~~ like ~~data base of~~ information from any state in which the ~~appointee~~ applicant has resided as an adult);

~~(8)(B)(v) complete~~(8)(B)(vi) a certificate of completion for any initial ~~and continuing~~ or additional necessary training requirements established by the Director;

~~(8)(B)(vi) file a monthly report on assigned cases in a format approved by the Director;~~(8)(B)(v) agree to perform and conduct themselves in a competent, professional, proficient, ethical, and appropriate manner and to meet any minimum qualifications as determined by the Director; and

~~(8)(B)(vii)~~(8)(B)(vi) agree to be evaluated at the discretion of the Director for competent, professional, proficient, ethical, appropriate conduct, and/or performance, and minimum qualifications.

(8)(C) Upon the appointment by the court of a private guardian ad litem, the court shall:

(8)(C)(i) use the following language in its order: "The Court appoints a private attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to represent the best interests of the minor child(ren) in this matter."; ~~and~~

(8)(C)(ii) designate in the order whether the private attorney guardian ad litem shall:

(8)(C)(ii)(a) be paid the set fee, as established by paragraph (8)(F), and an initial retainer;

(8)(C)(ii)(b) not be paid and serve pro bono; or

(8)(C)(ii)(c) be paid at a rate less than the set fee in paragraph (8)(F); and

(8)(C)(iii) send the order to the Director c/o the Private Attorney Guardian ad Litem Program.

(8)(D) Upon receipt of the court's order appointing a private guardian ad litem, the Director shall contact and assign the case to an eligible attorney~~.~~, if available.

(8)(E) Upon accepting the court's appointment, the assigned attorney shall file a notice of appearance with the court within five business days of acceptance, and shall thereafter represent the best interests of the minor(s) until released by the court.

(8)(F) The hourly fee to be paid by the parties and to be ordered and apportioned by the court against the parties shall be $150.00 per hour or at a higher rate as determined reasonable by the court. The retainer amount shall be $1000 or a different amount determined reasonable by the court. The retainer amount shall be apportioned by the court among the parties and paid by the parties.

(9) Complaints and appeals.

(9)(A)(i) Any person may file with the chair of the Committee a complaint regarding the Director, or regarding an administrative policy or procedure, not including complaints regarding a particular guardian ad litem, private guardian ad litem, or volunteer. ~~The~~ If deemed necessary, the Committee ~~shall~~may enter a recommendation to the Judicial Council, which may include discipline of the Director.

(9)(A)(ii) If a complaint regarding the Director or an administrative policy or procedure is received in the Director's office, the Director shall forward the complaint to the chair of the Committee within a reasonable time, but not more than 14 days after receipt.

(9)(B) Any person may file with the Director a complaint regarding a guardian ad litem employed by the Office of Guardian ad Litem, private attorney guardian ad litem, or volunteer~~.~~, as defined by UCA 78A-6-902(4)(a). The decision of the Director regarding the complaint is final and not subject to appeal.

(9)(C) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The decision of the Director regarding the dispute is final and not subject to appeal.

(9)(D) The failure of the Director to satisfactorily resolve a complaint against a guardian ad litem, private attorney guardian ad litem or volunteer is not grounds for a complaint against the Director.

(9)(E) The Director may remove with or without a complaint a private attorney guardian ad litem from the list of eligible private guardians ad litem for failure to perform or conduct themselves in a competent, professional, proficient, ethical and/or appropriate manner or for failure to meet minimum qualifications. ~~The~~ Within a reasonable time after the removal, and in the event the private attorney guardian ad litem ~~may appeal in writing the~~ has not yet been released by the court in a pending case, the Director shall provide written notice to such court of the Director's ~~decision to the chair of the Committee within 30 days after receiving notice of the decision.~~action, and the court may, in its discretion, determine whether the private attorney guardian ad litem should be released from the case.

(9)(F)(i) A complaint shall be in writing, stating the name and contact information of the complainant, the name of the child or children involved, the nature of the complaint and the facts upon which the complaint is based.

(9)(F)(ii) In resolving a complaint ~~or appeal~~, the Director or the Committee shall conduct such investigation as the Director or the Committee determines to be reasonable. The Director or the Committee may meet separately or together with the complainant and the person against whom the complaint is filed.

(9)(F)(iii) The decision of the Director may include discipline of the person against whom the complaint is filed. If the complaint is against a private guardian ad litem, the decision may include removal of the private guardian ad litem from the list of private guardians ad litem and the conditions for reinstatement.

(9)(G) This subsection does not apply to conflict guardians ad litem.

Rule 6-401. Domestic relations commissioners.

Intent:

To identify the types of cases and matters commissioners are authorized to hear, to identify the types of relief commissioners may recommend and to identify the types of final orders commissioners may issue.

Applicability:

This rule shall govern all domestic relations court commissioners serving in the district courts.

Statement of the Rule:

(1) Types of cases and matters. All domestic relations matters filed in the district court in counties where court commissioners are appointed and serving, including all divorce, annulment, paternity, cohabitant abuse and child protective order matters, dating violence protective orders, orders to show cause, scheduling and settlement conferences, petitions to modify divorce decrees, scheduling conferences, and all other applications for relief, shall be referred to the commissioner upon filing with the clerk of the court unless otherwise ordered by the presiding judge.

(2) Authority of court commissioner. Court commissioners shall have the following authority:

(2)(A) Upon notice, require the personal appearance of parties and their counsel;

(2)(B) Require the filing of financial disclosure statements and proposed settlement forms by the parties;

(2)(C) Obtain child custody evaluations from the Division of Family Services or through the private sector;

(2)(D) Make recommendations to the court regarding any issue, including a recommendation for entry of final judgment;

(2)(E) Require counsel to file with the initial or responsive pleading, a certificate based upon the facts available at that time, stating whether there is a legal action pending or previously adjudicated in a district or juvenile court of any state regarding the minor child(ren) in the current case;

(2)(F) Impose sanctions against any party who fails to comply with the commissioner's requirements of attendance or production of discovery;

(2)(G) Impose sanctions for contempt of court;

(2)(H) Issue temporary or ex parte orders;

(2)(I) Conduct settlement conferences with the parties and their counsel. Issues that cannot be settled shall be certified to the district court for trial; and

(2)(J) Conduct pretrial conferences with the parties and their counsel. The commissioner shall make recommendations on all issues under consideration at the pretrial and submit those recommendations to the district court.

(3) Duties of court commissioner. Under the general supervision of the presiding judge, the court commissioner has the following duties prior to any domestic matter being heard by the district court:

(3)(A) Review all pleadings in each case;

(3)(B) Certify those cases directly to the district court that appear to require a hearing before the district court judge;

(3)(C) At the commissioner's discretion and after notice to all parties or their counsel, conduct hearings with parties and their counsel for the purpose of taking testimony or proffers of testimony, except in cases previously certified to the district court;

(3)(D) Coordinate information with the juvenile court regarding previous or pending proceedings involving children of the parties; and

(3)(E) Refer appropriate cases to mediation programs if available.

(4) Prohibitions.

(4)(A) Commissioners shall not make final adjudications.

(4)(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

Rules for Final Action

Administrative Office of the Courts

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

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

MEMORANDUM

To: Policy and Planning Committee
From: Tim Shea
Date: May 6, 2013
Re: Rules for final action

The comment period for the following rules has closed, and the Policy and Planning Committee recommends that they be approved.

Rule summary

CJA 02-0206. Effective date of rules. Amend. Designates May 1 and November 1 as the presumed effective date of Judicial Council rules.

CJA 04-0610. Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments. Amend. Technical amendment.

CJA 07-0304. Probation supervision. Amend. As published for comment the amendments would have changed the time for filing and reviewing supervision plans. The amendments would have included the Balanced and Restorative Justice Model throughout the case planning process.

Comments

There were no comments, but the committee endorses the recommendation of the Board of Juvenile Court Judges to delete paragraph (4). The provisions of paragraph (4) affect the day-to-day training and management of probation supervisors, which need more flexibility than is permitted by a rule. These items will be incorporated into probation training and reference manuals.

Encl. Draft rules

Rule 2-206. Effective date of rules.

Intent:

To assure that persons affected by Council policies have sufficient time to conform their practice to the policy.

Applicability:

This rule shall apply to all rules of the Council.

Statement of the Rule:

Except as provided by this rule and by Rule 2-205, rules adopted by the Council shall be effective ~~upon the date of publication of the rule in a regularly published law reporter service. The Council may establish the effective date of a rule as a date certain following the date of publication~~ on May 1 or November 1 first following final action by the Council, unless the Council specifies a different date.

Rule 4-610. Appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments ~~in felony cases~~.

Intent:

To establish the criteria for the appointment of justice court judges to preside at first appearances, preliminary hearings and arraignments ~~in felony cases~~.

Applicability:

This rule shall apply to the district and the justice courts.

Statement of the Rule:

(1) The presiding district court judge may appoint a justice court judge to preside at a first appearance, preliminary hearing or arraignment if:

(A) the justice court judge consents to the appointment; and

(B) the justice court judge has either completed a course in the conducting of first appearances, preliminary hearings and arraignments, or has presided over at least five first appearances, preliminary hearings and arraignments prior to the effective date of this rule.

(2) A justice court judge may only accept a plea of not guilty, or not guilty by reason of insanity.

(3) The Justice Court Administrator shall maintain a list of those justice court judges who meet the qualifications set forth in paragraph (1)(B) above.

(4) The administrative office shall offer courses in the conducting of first appearances, preliminary hearings and arraignments, and shall pay the expenses of justice court judges attending such courses not offered in conjunction with the annual justice court judges conference.

(5) Hearings conducted pursuant to this rule shall be conducted on the record.

Rule 7-304. Probation supervision.

Intent:

To establish the duties, responsibilities and authority of the probation officer during supervision of minors placed on probation.

Applicability:

This rule shall apply to the Juvenile Court.

Statement of the Rule:

(1) Definition. Probation means the legal status created by court order following an adjudication on the ground of a violation of law where a minor is permitted to remain at home or in a foster home under prescribed conditions and under the supervision of the probation department, or other agencies or individuals designated by the court.

(2) Assignment of probation officer. When the court has placed a minor on probation, a probation officer shall be assigned to supervise the minor.

(3) Probation guidelines.

(3)(A) Probation should be limited to minors who are identified as medium to high risk to the community because of the frequency or severity of the offenses for which they have been adjudicated.

(3)(B) Probation should begin with an intensive orientation by a probation officer and assignment to a probation level based on the results of a risk assessment. Probation should not extend longer than six months, except when special circumstances are present.

(3)(C) Probation status should not be continued solely for the reason of monitoring payment of fines and restitution for a minor who otherwise has complied with the conditions of probation.

(3)(D) Probation should not be used for a youth referred only for status offenses or minor infractions. Other dispositional alternatives should be considered for this type of case such as a fine, compensatory service, delayed disposition or continuing jurisdiction, without requiring the intervention and supervision of the probation department.

(3)(E) A court created status of continuing jurisdiction should be considered for less serious offenders that does not require probation department supervision but does require the youth to demonstrate a period of legally acceptable behavior before termination.

(3)(F) ~~Probation is generally reserved for a higher risk youth.~~ Detention should be available as a short term option during probation, when determined appropriate, within the provisions of the law.

(3)(G) Probation should not be continued on an inactive basis if no future contacts are determined necessary by the probation department. A continuing jurisdiction status may be created to phase out probation.

(3)(H) Interim probation progress reviews may be conducted by a probation supervisor. Termination of probation and modifications of the conditions of probation must be approved by the court.

(3)(I) If further criminal acts require commitment of the youth to the Division of Juvenile Justice Services, probation should be terminated and subsequent responsibility for supervision assigned to the Division.

(3)(J) When the court places a youth on probation, it should be a formal proceeding where the specific conditions are reviewed by the court, the future probation review date set, and the severity of this sanction emphasized.

~~(4) Supervision and correctional plan. When a youth is placed on probation, the assigned probation officer, when ordered by the court, shall file a supervision and correctional plan with the court within 30 days of the entry of the probation order. The plan shall be based on the Pre-Screen Risk Assessment (PSRA) or the Protective Risk Assessment (PRA). The plan shall be reviewed and, if appropriate, updated at least every 90 days as the PRA is updated or more frequently as the plan's intended outcomes and goals are completed or the minor's needs change. The plan shall include the following:~~

~~(4)(A) the specific risk and protective factors;~~

~~(4)(B) the services needed to address the risk and protective factors;~~

~~(4)(C) the Balanced and Restorative Justice Model for each domain used in the plan;~~

~~(4)(D) a statement of the intended outcomes and goals;~~

~~(4)(E) the role of each signing party in meeting the intended outcomes and goals; and~~

~~(4)(F) if the plan is an updated plan, a statement that specifies progress toward the intended outcomes and goals.~~

~~(5)~~ (4) Supervision. Supervision activities by the probation officer may include but are not limited to:

~~(5)(A)~~ (4)(A) Recommending to the court the appropriate restrictive conditions of probation to minimize the risk to the community in allowing the youth to remain in his home or alternative living arrangement.

~~(5)(B)~~ (4)(B) Monitoring a youth's compliance with the court ordered conditions of probation. This may include periodic progress reports which focus on compliance with the conditions of probation established at the time the youth was placed on probation and the number and type of contacts made by the probation officers or other agency.

~~(5)(C)~~ (4)(C) Reporting violations of court ordered probation conditions and making appropriate recommendations to the court.

~~(5)(D)~~ (4)(D) Identifying and developing available community resources to meet special needs of the youth and/or the family identified in the supervision and correctional plan, including work placement, tutoring and social services.

~~(5)(E)~~ (4)(E) Developing community work sites for the involvement of a youth and encouraging constructive use of time.

~~(5)(F)~~ (4)(F) Counseling for short periods of time, but not to the extent that it supplants services which can be provided by other community resources.

~~(6)~~ (5) Review. The probation department shall submit a written report to the court prior to each review hearing updating the supervision and correctional plan as necessary and reporting on the probationer's progress.

~~(7)~~ (6) Court reporting. If a youth is suspected of violating the terms and conditions of probation, the probation department shall immediately report the alleged violation to the court and may make appropriate recommendations based upon the alleged violation.

Other Rules

Administrative Office of the Courts

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

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

MEMORANDUM

To: Judicial Council
From: Tim Shea
Date: May 6, 2013
Re: Rule 1-206. Criteria for leadership positions.

The Policy and Planning Committee was unable to reach a recommendation regarding this rule and so presents it for the Judicial Council's consideration. The draft has been circulated within the judiciary, but it has not been published for comment.

The topic was first raised during the planning workshop in Moab in October, 2012 and assigned to the Policy and Planning Committee. First the committee developed the concept of a minimum number of years as a judge before serving in leadership positions. Although never reduced to a rule, the concept was circulated to the boards of judges and the presiding judges. As a result of their input, the approach was changed to describe the qualities that judges should look for in the leaders they select.

After further discussions, the Board of District Court Judges recommends against any rule. The Board of Juvenile Court Judges and the Board of Justice Court Judges support the rule.

Encl. Draft rule

450 South State Street / POB 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: tims@utcourts.gov

Rule 1-206. Criteria for leadership positions.

Intent:

To describe the qualities and interests expected of judges selected to serve on the Judicial Council, on the boards of judges, and as presiding judge.

This rule is not intended to restrict the discretion of judges in choosing their leaders, but rather to encourage the selection of judges who want to and are able to contribute in leadership roles.

Applicability:

This rule shall apply to the selection of members of the Judicial Council, members of the boards of judges, and presiding judges.

Statement of the Rule:

(1) The qualifications of those who serve in leadership positions are important for the management of the judiciary, and leaders should be selected because they exhibit those qualifications rather than by rotation or seniority alone.

(2) Judges who select judicial branch leaders should give careful thought to who among them exhibit the qualities and interests that a leader should have:

(2)(A) experience on the bench;

(2)(B) experience with committees, workgroups or projects;

(2)(C) interest in issues of policy, budget and management;

(2)(D) motivation to serve the interests of the judicial branch of government;

(2)(E) willingness to take the extra time to serve; and

(2)(F) the respect of one's colleagues.

TAB 4

Court Commissioner Compensation - Cost of 1% COLA

Current Annual	New Annual	Increase	Contingent Benefit Cost	Total Cost for 11 Commissioners
$120,060	$121,261	$1,201	$440	$18,049

Comparison by Fiscal Year to District Judge Salary

Fiscal Year	Court Commissioner Annual	District Judge Annual	Percent Difference
2005	$94,252	$104,750	10%
2006	$99,911	$111,050	10%
2007	$103,002	$114,400	10%
2008	$113,211	$125,850	10%
2009-2012	$118,870	$132,150	10%
2013	$120,060	$133,450	10%
proposed 2014	***$121,261***	***$134,800***	***10%***

TAB 5

Date 11/9/13
Filed
Mailed
Emailed X

Administrative Office of the Courts

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

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

Informal Opinion 12-02
December 28, 2012

Question:

The Judicial Conduct Commission has requested an opinion on whether a judge may refer criminal defendants to a specific service provider when the provider is on a preapproved roster created by the court and the referrals are made on a rotating basis.

Answer:

Yes, as long as the criteria the court creates for being admitted to the roster are reasonable and directly related to the services that the court needs and any interested individual or entity may apply to be included on the roster. The judge should not make referrals from the roster. The roster should be provided to the defendants and they should select their preferred provider.

Discussion:

The Judicial Conduct Commission (JCC) has requested an ethics advisory opinion on the propriety of a judge referring defendants to a specific service provider. The JCC states that the request arises from a concern "that a justice court's on-going referral program . . . may violate [the] Code of Judicial Conduct." The JCC provided the following background:

> [T]he judge preapproves a pool of providers and then makes referrals among those providers on a rotating basis. Any state licensed provider may apply to be admitted to the pool by complying with the provisions of the [court's] administrative orders. There is no evidence that the judge or the court benefits financially from the arrangement or that admission to the pool is based on anything other than state licensure and a willingness to adhere to the principles and requirements set forth in administrative orders.

The JCC also provided information from the justice court showing the criteria and process for inclusion on the roster.

In making its request, the JCC referenced Informal Opinion 10-2 in which this Committee determined that a judge may not refer parties to a specific mediator. The Committee determined that referring parties to a specific mediator would create the impression that the mediator is in a

special position to influence the judge. The Committee also determined that referring to a specific mediator would be using the prestige of the judicial office to advance the personal and economic interests of the mediator. The Committee did not address the question of whether a judge could give parties a list of mediators and allow the parties to select from the list. However, the Committee stated that a judge could refer individuals to the roster of mediators maintained by the Administrative Office of the Courts.

According to the facts provided by the JCC, referrals in the justice court are made from a roster of court approved licensed providers. The court has established criteria for being listed on the roster. Any licensed provider may apply to be on the roster, as long as the provider is willing to make the commitments required by the court. Under the criteria, providers are required to have a representative present in the courtroom when referrals are made. The court will then make referrals from the list on a rotating basis, but a referral may also include consideration of a provider's proximity to a defendant's domicile or work. Thus, although referral will generally be on a rotating basis, some deviation may occur when the court deems it appropriate.

The Committee determines that a judge may create a roster from which referrals will be made provided the creation of the roster is based on unbiased considerations. The criteria for being included on the roster must be reasonable and directly related to the needs of the court. For example, if licensure is required to provide the services, either because a law specifically requires a licensed program, or the court determines that only licensed providers are capable of providing the necessary services, then licensure is a reasonable criterion. Requiring a provider to offer specific services is also a reasonable criterion. By creating a list that is open to those who are interested the court will eliminate any perception that the providers are in a special position to influence the judge. Also, the judge will not be using the prestige of the judicial office to advance the interests of others, as all interested and qualified providers will be on the list and have the same opportunities. Although the providers will benefit financially from being included on the list, by allowing all interested providers to apply for inclusion the prestige of the judicial office is not a factor. The judge will not be favoring one provider over another.

When establishing a roster, the judge may not establish any criterion that reflects bias toward a specific provider or a specific type of provider. In the circumstances of this particular request, one of the criterion that the Committee questions is the requirement that the provider have a representative present in the courtroom as a condition for inclusion on the roster. On its face, it is not clear why presence in the courtroom would be necessary when, under most circumstances, it is not necessary for a provider to be present in court in order for effective services to be administered. There may be reasonable justifications for this requirement that are not immediately apparent to the Committee, and therefore the Committee is not determining that this particular requirement is inappropriate. The Committee simply notes that courts must carefully evaluate their criteria to ensure that capable and willing providers are not unreasonably excluded.

As for making referrals, a majority of the Committee determines that judges should not make referrals, even if the referrals are made on a rotating basis.[1] Judges should provide a copy of the roster to defendants and the defendants should select the provider. By having the defendants select their preferred provider, judges will be removed from any perception that judges have biases towards providers on the roster. The courts' role is to allow qualified and acceptable providers to be available to defendants. Having fulfilled that role, there is no reason for the court to be involved in the referral process.

In conclusion, courts may create rosters of service providers as long as all interested individuals and entities have an opportunity to apply for inclusion, and provided the criteria for being included are reasonable and unbiased. The court must allow defendants to select from the roster. Under these circumstances, the court would not be lending the prestige of the judicial office, and providers will not be receiving economic benefits to the exclusion of others.

The Committee recognizes that the conclusions of this opinion will raise questions about court referrals in other areas, such as specialty courts. The Committee is unable to anticipate how this opinion will affect those areas because the questions will be fact specific as to how a provider is selected and being used. The Committee must therefore await opinion requests dealing with other situations before offering advice.

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[1] One Committee member is of the opinion that a judge may make referrals provided the referrals are done entirely on a rotating basis. The judge would not be able to consider proximity or other factors that would deviate from rotation.

To: Judicial Council

From: Hon. Scott Hadley, Chair, Board of District Court Judges

Date: May 11, 2013

Re: Informal Opinion 12-02—Comments

At its February 2013 meeting the Board of District Court Judges heard a report from the AOC's general counsel Brent Johnson regarding the significant amount of feedback that has been received related to the Ethics Committee's Informal Opinion 12-02 dated December 28, 2012 (the "Opinion"). The Board was informed that the Judicial Council has specifically requested input from the Board related to the Opinion for consideration at the Council's May 2013 meeting. Initially, the Board tasked its Chairman, Scott Hadley, together with Brent West, as presiding judge of the Second District, to make contact with the presiding judges of all districts and to otherwise collect comments from the district court bench.

In passing along these observations, the Board does not intend to be, and does not wish to appear to be, critical of the work done by the Ethics Committee. The Board recognizes and appreciates the work that the Committee performs, and the judges who have made comments have also expressed their sincere appreciation for the work done by the Committee.

Outlined below are some of the issues that have been raised by district court judges concerning the Opinion as it relates to the selection of service providers. They are not listed in any particular order of preference or depth of concern. They are intended only to reflect insight into how the Opinion may affect the practical realities of the sentencing and oversight process. The comments have been garnered from multiple sources, but the Board has had neither the time nor the resources to do any scientific surveying or empirical analysis.

1. Does the phrase "service provider" as used in the Opinion refer only to providers of actual services, such as mental health treatment, drug or alcohol treatment, etc., or does it include private probation supervisors who do not provide treatment, but only supervise probation? The number of private probation supervisors is increasing. In rural areas, and even in highly populated areas, district court judges are required to handle significant misdemeanor calendars. By statute, the State's Department of Adult Probation and Parole (hereinafter "AP&P") can decline supervising probation on class B and C misdemeanors. In addition, AP&P is increasingly recommending the appointment of private probation supervisors on class A misdemeanors. Many judges believe that rotating evenly among these private probation supervisors should not create an ethical problem. Each probation supervisor can work with the defendant in locating and completing an appropriate court ordered service program. The judge in no way lends credence to any one probation supervisor and the defendant and private probation supervisor select the service provider. This is analogous to the AP&P model currently used in the district courts when AP&P is assigned to supervise felony defendants.

2. We recognize the need for the Ethics Committee to address judicial behavior as it relates to the code of ethics, but many judges have expressed concern over the committee's apparent position that the right to choose a provider belongs entirely to the defendant. Full implementation of that concept, as a practical matter, may create several major problems and considerable delay in the sentencing and oversight process. For example, typically a class B or C misdemeanor defendant is placed on informal court probation rather than assigned to AP&P (which would decline the assignment) or to a private probation supervisor (whose fees would add tremendously to the financial burden on the defendant). From experience it seems clear that requiring the defendant to meet immediately with a representative of a service provider who is present in the courtroom significantly increases the likelihood that (i) the services will actually be provided in a timely fashion and (ii) any failure of the defendant to complete the program will be brought to the attention of the Court. Otherwise, the Court would be required to schedule multiple reviews during the course of the probation period to determine if the defendant actually found a provider and completed the required program. Adding those reviews to already over-crowded misdemeanor dockets would be very burdensome to the Court and to the defendants.

3. In addition to the above, there are concerns that defendants will gravitate to the cheapest and easiest programs. This seems to be contrary to the goal of utilizing the best and most effective probation services and programs. Recently, the Judiciary has spent several years talking about the importance of utilizing only "evidenced-based programs". Many of us agreed that was the direction we should be heading. This opinion appears to provide a way to step backwards.

4. Not all service providers are created equal. While they are all required to be state approved and provide multiple services, many specialize. Some offer a better alcohol education class than others. Some emphasize inpatient treatment, others outpatient treatment. Some have better language counselors than others. It seems that a judge should be able to direct the defendant to use the programs or services best suited to the defendant's specialized needs. It is unclear how this can be accomplished within the constraints outlined in the Opinion.

5. If a judge cannot select a specific program as a condition of probation and defers the selection to the defendant, does the judge have the right to decline a program that the defendant then selects? For example, a defendant may claim that he or she can only afford an anger management class, but it is apparent to the judge that the defendant needs a full fledged domestic violence program. Can the judge say no? If the judge can decline the program selected by the defendant, significant delays will be introduced into the process to allow the defendant to present proposed programs for consideration by the judge. Also, how is that better than directing the defendant to the appropriate program in the first place?

6. Rural judges have expressed concern that there are not very many service providers in their areas. What does the committee recommend if there is only one service provider?

7. Many judges who contacted us have indicated that they agree with the minority position expressed in the opinion that would allow a strict controlled rotation of providers. They feel that potential ethical issues are adequately addressed by requiring a rotation.

Thank you for allowing us to express these concerns to the Council.

TAB 7

INITIATIVE ON UTAH CHILDREN IN FOSTER CARE

Highlights and Accomplishments

April 2013

IOU Committee Members and Affiliated Subcommittees

Alisa Van Langeveld
Amanda Singer
Barbara Feaster
Barbara Leavitt
Barbara Thompson
Barry Newbold
Beth Beck
Brent Platt
Brett Wilson
Brian Farr
Carol Carroll
Catherine Johnson
Cecil Robinson
Chris Bray
Corey J. Hodges
Dan Becker
Dana Templeman
Daniel Burleigh
Daniel Romero
David Groot
Dawn Stevenson
Dee Rowland
Derek Brown
Diane Moore
Dolores Celio
Dorothy Dart
Duane Betournay
Floyd Wyasket
France Davis
George Niederauer
Glenna Gallo
Gloria Wilkinson
Governor Olene S. Walker
Greg Hudnall
Helen Thatcher
Jacci Graham
James Whitaker
Jamie Hinsz
Jean Hill
Jeff Smith
Jennifer Larson
Jody Marsden
Honorable Christine Decker
Honorable Christine Durham
Honorable Kay A. Lindsay
Honorable Sharon McCully
Honorable William J. Thorne
Judy Hull
Karen Crompton
Katie Gregory
Kelly Peterson
Larry Crenshaw
Larry Shumway
Laurieann Thorpe
Lisa McDonald
Lisa-Michele Church
Lori Cerar
Mark Shurtleff
Martin Bates
Marty Kelly
Mary Lucero
Mason Bishop
Max Lang
Merrill Bateman
Michael K. Young
Michele Christiansen
Misty Butler
Norma Villar
Palmer DePaulis
Pamela Atkinson
Pamela Russell
Patti Harrington
Patti VanWagoner
Paula Green Johnson
Ray Wahl
Rep. David E. Litvack
Rep. David L. Hogue
Ric Cantrell
Richard Anderson
Ryan Carrier
Sarah Williamson
Sheldon Spotted-Elk
Sisifo Taatiti
Steve Scott
Suzanne Buchanan
Tani Pack Downing
Tanya Albornoz
Thomas Metcalf, M.D.
Todd Bird
Travis Cook
Trent Hendricks
Veola Burchett
Verne Larsen

Initiative on Utah Children in Foster Care

Highlights and Accomplishments

Background

In 2005, the Utah State Courts launched the Initiative on Utah Children in Foster Care (IOU) in response to a report by the Pew Commission on Children in Foster Care. The result was a collaborative effort between child protection agencies, business leaders, religious groups and public officials to improve the lives of youth in foster care. Christine Durham, then-Chief Justice of the Utah Supreme Court, spearheaded IOU in cooperation with Utah Governor Olene Walker, to bring attention to key issues in child protection. "We saw a need, beyond what government agencies could do, to rally as a community around these young people," Justice Durham remembers. She and other leaders set an ambitious agenda to improve the amount and quality of community involvement in the well-being of children. With this focus, IOU implemented innovative solutions and system change occurred on many fronts.

> "IOU as an acronym worked so well because it meant we were focused on what we owed to these children and families. The notion was we owed these children better outcomes - a pretty tall order."
>
> Justice Christine Durham,
> Former Chief Justice, Utah Supreme Court

It is unusual to have such an initiative led from the Utah Supreme Court, in conjunction with Juvenile Court, but it illustrates the vast impact of children's issues on the legal system as a whole. Leadership from all court levels has sustained IOU in its ongoing effort for more than seven years.

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The PEW Report

Utah leaders were inspired when The Pew Charitable Trusts created and funded the Pew Commission on Children in Foster Care. The Commission released a provocative study in 2004 entitled "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care." Utah Court of Appeals Judge William A. Thorne had the distinction of serving on the National Pew Commission. "It was ground breaking because the Pew Commission report provided specific action steps that each state could take to change the futures for these children," Judge Thorne notes. The Pew report suggested that courts should take a leadership role in child protection on four fronts:

1. Increasing court accountability in child abuse and neglect cases;
2. Promoting coalitions between child serving systems and the courts;
3. Strengthening judicial leadership to bring about improved court performance in child abuse and neglect cases;
4. Ensuring that children and their parents have a direct voice in court, effective legal representation, and the timely input of those who care about them.

When reading the Pew recommendations in 2005, Utah's Supreme Court Chief Justice Christine Durham was galvanized into action. "It was our chance to go out on a limb for these children and IOU was born," she states.

"When the PEW report came out, Utah was extremely fortunate to have a State Chief Justice who took the recommendations to heart. She has done a fabulous job of keeping people motivated."

Ray Wahl
Deputy State Court Administrator

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Building on Past Progress

During the 1990s, Utah faced some of the same challenges as the rest of the country with social workers carrying large caseloads and child protection programs struggling with reduced funding. Children were falling through the cracks of this overwhelmed and underappreciated system, resulting in abuse or neglect by family members and even harm while children were in foster care. These tragedies caught the attention of national child advocates and demands for change rang out.

In 1993, the National Center for Youth Law filed *David C. v. Leavitt*, a class action lawsuit alleging a comprehensive failure of Utah's child protection system. As a result, Utah leaders began to improve the care given to youth in foster care and negotiated a robust settlement agreement mandating greater funding for DCFS caseworkers. Important reforms such as citizen oversight and timelines for permanency were put in place. Utah's measures of performance moved steadily forward in the early years. "We adopted a new Practice Model for child protective services (CPS)," explains Betournay, "and that added a great deal of professionalism and accountability to our system." Overall, Utah also benefitted from its unique centralized judicial system, where juvenile court judges are dedicated solely to children's issues. The state follows the National Council of Juvenile and Family Court Judges' "one family, one judge" model to keep connections open with the families being served. As Justice Durham remembers, "Our stakeholders began to focus on Utah's children in a new way, and the *David C.* lawsuit created an environment that made everyone highly motivated."

> "*David C.* was a game changer with the recognition that child protection is pretty serious business. If taxpayers don't fund it well, it becomes a liability for the state on a variety of fronts."
>
> Duane Betournay
> Trial Court Executive, Former DCFS Director

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Where Utah is Headed

Due to the commitment shown by IOU and allied efforts by the entire Utah child protection community, outcomes for youth improved. The *David C.* lawsuit was finally dismissed in the summer of 2007. Child advocates praised the work of the Utah leaders in turning the system around. The National Center for Youth Law Director Leecia Welch noted on the center's website: "After 14 long years, Utah now has one of the best child welfare systems in the country. Children are safer, and they have a better chance of reaching their full potential."

The state's exit from the massive class action lawsuit was the first of its kind nationally, made possible by key leadership from then Utah Governor Jon M. Huntsman, legislators, IOU,

> "You have to hand it to Utah for doing so well. There is nothing quite like having a degree of coordination about child protection statewide in what was literally a matter of life or death."
>
> Duane Betournay,
> Trial Court Executive, Former Director of DCFS

Duane Betournay, Trial Court Executive, Former DCFS Director

the juvenile courts, DCFS and allied agencies. Utah's Department of Human Services Executive Director Lisa-Michele Church shepherded the exit by rallying impassioned people to take up the cause of child protection.

"Utahns from all walks of life stepped in to help improve foster care," Church says. "The YWCA helped, the courts pitched in, advocacy groups like Voices for Utah Children came to the table, and everyone did what they could. DCFS caseworkers felt support from legislators who recognized the difficulty of their jobs. Foster parents knew they were valued by the community at large." IOU and the Utah Court system continue to be the vanguard of efforts to maintain the progress of the last decade.

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Subcommittees

IOU's broad vision is to bring non-traditional groups together around issues that affect the whole community – the care of abused and neglected children. "We couldn't just look at the immediate need of a child after abuse; we had to also look at the long-term chances we were going to give these children," says Duane Betournay, then head of Utah's Division of Child and Family Services (DCFS). "It was immensely powerful to have bankers, nurses, pastors, teachers, and people from all walks of life joining with our government agencies in this effort."

IOU's subcommittees focus on supporting relatives who are caregivers, improving educational outcomes, increasing public awareness of child protection issues, and helping teenaged youth transition successfully into adulthood. Synergies between state agencies and community leaders are resulting in a more proactive environment to solve the tough problems facing the youth.

Former Chief Justice Christine Durham & Lisa-Michele Church,
Former DHS Executive Director and Juvenile Court Administrator

IOU relies on some limited funding from the federal Children's Bureau Court Improvement Program grant, but the majority of its effort is donated and volunteer in nature. "IOU isn't so much about creating and funding new services," observes Justice Durham, "it's about bringing the right people together into a room to use existing resources in new ways."

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Kinship Care Subcommittee

Beyond the 2,500 Utah children in actual foster care, Utah Census data reflects an even larger shadow population of 83,000 youth living informally with relatives due to absent parents. Despite their passionate efforts to care for their relatives, kin sometimes lack the resources to care for the child's special needs. IOU's Kinship Subcommittee, under the leadership of LDS Church official Merrill Bateman, was created to address these concerns.

> "One of the major concerns that anyone knowledgeable of kinship care had in the beginning was the lack of training for the kinship caregivers; there was almost nothing out there."
>
> Elder Merrill Bateman
> The Church of Jesus Christ of Latter-Day Saints

The Kinship Subcommittee quickly understood how strained the established support systems were in delivering services and information to kinship care givers. Far too often kinship families were being denied financial support due to bureaucratic barriers. The IOU Kinship Subcommittee successfully focused on making these systems easier for kin to navigate.

Kin needed better information on how to get help. One approach was to expand Utah's existing Grandfamilies program. Grandfamilies brings relatives caring for children together and supports them on many fronts. Utah's century old non-profit, Children's Service Society has managed the Grandfamilies program since 2002. Due to IOU's efforts, Grandfamilies increased attendance in its supportive educational classes. The subcommittee also helped establish a one-stop information website hosted by the Children's Service Society. When the subcommittee was originally formed, the existing Grandfamilies Program served only residents of Salt Lake County; with IOU support, Grandfamilies expanded its existing Salt Lake County services into Utah County, Tooele County, and Davis County.

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> "We discovered kinship care runs across all economic backgrounds in Utah. It's impossible to stereotype the situation or person. We saw an opportunity to go beyond the small foster care population and to reach the population of relatives informally caring for kids too."
>
> Katie Gregory
> Assistant Juvenile Court Administrator

The Kinship Subcommittee illustrates the efforts made of bringing community partners to the table. The subcommittee built upon the highly successful support structures already located in Utah's faith community.

Former State Chief Justice Christine Durham notes, "We invited providers of services in the non-profit children services and religious groups. We knew they had networks. They were where the rubber meets the road. We went straight to the religious leaders. Elder Bateman really took this project on and brought an unprecedented level of visibility to foster care issues." IOU was able to support kin caregivers by encouraging well established religious community networks with additional funding and resources to strengthen kinship efforts.

Katie Gregory, Judy Hull, Merrill Bateman, Jacci Graham

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- Created a Grandfamilies program website hosted by the Children's Service Society to provide information and support for caregivers.

- Supported the Third Judicial District Kinship Summit. The summit was attended by 300 participants representing the Division of Child and Family Services, the Juvenile Court, and the Office of Licensing.

- Expanded Grandfamilies program beyond Salt Lake County, into Utah County, Tooele County, and Davis County.

- Initiated the statewide Grandfamilies Awareness Week.

- Facilitated streamlining DCFS referrals to Utah's Department of Workforce Services - getting people where they needed to go faster for guardianship supports.

- Secured financial support exceeding $25,000 for the creation of fliers distributed throughout religious organizations.

> "One of the great benefits out of the committee has been that we have agencies from the state that are meeting with charitable and faith groups. One of the accomplishments has been to tie together the community that works with these issues to figure each other out and to work through these issues."
>
> Elder Merrill Bateman
> The Church of Jesus Christ of Latter-Day Saints

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Education Workgroup

Youth in foster care have lower GPAs, lower test scores, and experience decreased permanency due to increased school mobility. Frequently changing schools erodes a child's ability to succeed educationally. The challenges faced by foster youth deny them opportunities equal to their peers who are not in foster care. These challenges include the psychological trauma of leaving familiar surroundings, enrollment issues caused by complex administrative regulations, starting over in new schools, changing schools before completing credits, and difficulty transferring earned credits.

IOU heard directly from youth in foster care that they were not getting the same chances at school. After hearing their voice, the IOU Committee formed the IOU Education Workgroup chaired by then Juvenile Court Administrator Ray Wahl. The Education Workgroup learned that when school transfers did occur, class credits earned by youth in foster care were not always transferred.

The Education Workgroup has been instrumental in the effort to reduce barriers to education. They helped negotiate a new enrollment protocol between Salt Lake Valley Region DCFS and the Jordan School District to admit youth seamlessly. IOU now hopes districts statewide will streamline their enrollment processes in order for these youth to move forward successfully with their education.

A 2012 collective agreement between the Utah State Office of Education and the Department of Human Services resulted in a statewide data match, showing specifically that youth in state care were behind their peers in school success. Assistant Juvenile Court Administrator Katie Gregory poignantly notes, "Before IOU, education of children in care was a fuzzy area. We had lots of questions, but no data."

> "The data presents a depressing picture, but it gives us a baseline to measure progress. It provides room for optimism in moving forward because at least we are beginning to have a measurable idea of where we are with these youth. With this data, we can focus on specific issues and make targeted improvements"
>
> Misty Butler
> Utah Court Improvement Program Coordinator

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Ray Wahl, Laurieann Thorpe, Misty Butler

Youth in foster care need different things from Utah's schools, and educators are up to the task. Communication has already improved between caseworkers and teachers because the Education Workgroup remains focused on youth's educational outcomes. IOU concentrates on education improvement by fostering collaborations between these agencies, including those who serve tribal communities.

> "If you can solve the education problem, you can improve everything about the futures of these children."
>
> Justice Christine M. Durham
> Former Chief Justice, Utah Supreme Court

> "In the past education was the hot issue that excited stakeholders. But it can get discouraging when all the barriers don't go away. To our credit, we have stuck with this, because of the involvement of the Courts. They continue to hold us accountable. The courts really are critical to holding the whole system accountable."
>
> Laurieann Thorpe
> State Education Liaison

The judges now have the tools to track a child's school progress and ask tough questions of the guardian ad litem, caseworker, parents, and service providers. Ray Wahl notes, "I have really enjoyed the work of bringing schools and courts together. It reminds me that everyone has good intentions about wanting to get good outcomes for kids." However, Wahl also explains that despite the gains, "to declare victory, that we have solved all the education problems for foster care kids, will not help these kids. We cannot take our eye off the ball with these kids. We must continue to advocate passionately for their success."

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- Launched the *Educating Youth in State Care* website in May 2009 as a collaborative education resource and found at http://www.hs.utah.gov/education. The website provides a wealth of information for the public on education for youth in foster care and youth involved in the juvenile justice system.

- Led a training session introducing 870 education, court, and human services workers to the *Educating Youth in State Care* website.

- Created the first State Education Liaison position.

- Designated education liaisons in each DCFS region.

- Updated SAFE (the DCFS child welfare database) screens with education information for each child in DCFS custody.

- Helped broker an initial data exchange between the Department of Human Services and the Utah State Office of Education as the first step toward information sharing.

- Hosted an Education Summit with the Fourth District Juvenile Court where 260 participants received information on local, state, and national education efforts. Participants provided their professional feedback on how to improve education for court-involved youth.

- Provided education immersions between partners involved in the education of children in foster care about the role each agency plays.

- Former Chief Justice Christine Durham met with state school superintendents requesting their support and greater attention to the needs of foster youth in schools.

- In a collaborative effort, received a federal grant to recruit and train Court Appointed Special Advocates (CASA) in education advocacy.

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CASAs as Education Advocates

Recognizing that youth in state care need someone to advocate for their education needs, IOU leaders came up with an innovative way to expand the resources of the Office of Guardian ad Litem. Leaders determined that Court Appointed Special Advocates (CASAs) could be trained to monitor a child's school progress and report to the court.

> "Caseloads are just too high for everyone. Our Guardian ad Litem attorneys represent an average of 150-200 children a year. That breaks down to approximately 10 hours a year per case with 8-9 of those hours spent in court. There simply isn't enough time for any case party to look into all aspects of a child's life. CASAs have more time than any other case party, resulting in identifying any potential red flags. Education has become a primary focus for the Utah CASA Program."
>
> Mary Lucero,
> Utah State CASA Director

Gwen Knight & Mary Lucero

IOU helped the CASA effort by using the Collaboration to Increase Education Stability Grant to recruit and train 300 additional CASAs to act as education advocates. The IOU Education Workgroup and the CASA program are excited to continue training quality CASA volunteers who will advocate for the youth's educational needs throughout the legal process.

> "The advocacy work of Utah's CASAs has assisted in maintaining focus on the individual education needs of the children we are all responsible to serve."
>
> Travis Cook
> State Youth in Custody Program Coordinator

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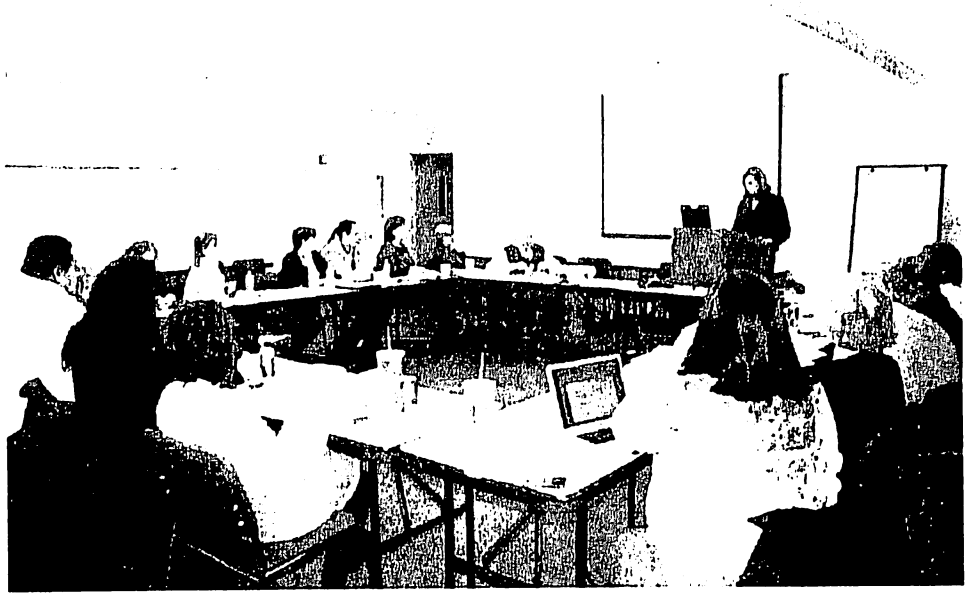
[illegible] Accomplishments

- Helped secure grant funding to recruit an additional 300 CASAs specifically for education advocacy in the court system.

- Hosted the Endless Dreams Summit in January of 2013 to train 300 educators and CASAs on unique child protection issues.

- Negotiated Family Educational Rights and Privacy Act (FERPA) barriers to allow schools to exchange information with CASAs.

- Trained judges on how to best use CASAs in the courtroom.



IOU Education Workgroup in Action

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Public Awareness Subcommittee

The IOU Public Awareness Subcommittee recognized the importance of keeping community leaders and members knowledgeable about child protection issues. Child protection is often unsung and unappreciated by the public at large. But if left unsupported, it will be constantly under attack and weakened. Utahns needed a better understanding of the inner workings of child protection investigations. DCFS created an "immersion day" where citizens could trace a child's experience in the child protection system firsthand - all in one day. Attendees gain an understanding of the complex and often difficult decisions made by DCFS and Juvenile Court staff.

> "The child protection system is only as effective as the citizens want it to be. That's why we informed citizens. Utahns will get the system they champion, so we wanted them to know what was at stake."
>
> Lisa-Michele Church
> Juvenile Court Administrator

> "The charm of the committee is it's not just the internal players and likely suspects who serve. It brings in business leaders, religious groups, and outside community groups. To have someone like the president of Zions Bank or a recognized leader of the LDS Church go and talk to the Salt Lake Tribune about foster care needs is very different than having an internal advocate. Policy makers hear from traditional stakeholders all the time. But they don't hear from business and community leaders all the time."
>
> Ray Wahl
> Deputy State Court Administrator

The Public Awareness Subcommittee has focused on winning the support of the community and its leaders. Duane Betournay noted, "If you don't have the broad support of the community and unless there is broad recognition of the good work of the agency, the work will fail. That is where IOU provides real benefit. IOU keeps people focused on quality and communication." Groups regularly observe court and leave feeling a little overwhelmed but praising the difficult work done there.

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Huntsman Administration Accomplishments

- Supported DCFS's "immersion day" regularly held to educate the public on foster youth's transition through state agencies.

- Teamed with the *Deseret News* in donating $100,000 in free advertising to share "Stories of Hope" of children and families' successful experience with the child protection system.

- Established the Child and Family Services Cabinet Council by Governor Huntsman to ensure that the needs of children were prioritized in all state funding allocations.

- Created Workshops for kin on the effects of methamphetamine use on a person's thinking, the type of child neglect related to parental drug use, and the ways kin could help children in foster care.

- Supported a "Drug Endangered Children Conference" where a group of children presented on their experiences with their substance abusing mothers and how DCFS assisted.

- Held an immersion in Spanish for Latino community leaders.

- Held immersions tailored to schools or other special interests.

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Health Care

IOU members heard concerns about health issues from youth in foster care. Teens were worried about being able to go to the doctor after they left foster care. This caused extreme anxiety for the youth and led the Commission to work with a Utah legislator to advance a bill to extend Medicaid coverage to age 21 for youth with the greatest need.

> "It's not like we live in a state where there are tens of thousands of youth in foster care. This is a solvable problem and we can and are making a difference."
>
> Ray Wahl
> Deputy State Court Administrator

Former Utah Supreme Court Chief Justice Christine Durham has been an advocate for youth's health care since the beginning of the Committee. Justice Durham remains passionate on the issue. "One of the issues we continue to worry about is health care. It is still very spotty. The system is failing kids in making services available. Youth in foster care tend not to hook into these services within the system. They lack what is needed to get medical care, including mental health services."

- Formulated and promoted the passage of H.B. 228 Medical Recommendations for Foster Children with Representative David Hogue in 2006, the bill extending Medicaid coverage from age 18 to age 21 for youth in protective services.

- Advanced foster youth's health care issues by bringing community pediatricians into the committee, who raised awareness of these issues with their physician colleagues.

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Children's Mental Health

Many of the children in Utah's foster care system face an additional challenge due to mental health issues, ranging from depression to severe emotional disturbances. IOU was privileged to hear from several of these youth during the March 2011 IOU meeting. The teens described feeling alone and misunderstood due to their unique needs. All of them had spent time in residential mental health treatment programs in Utah and they told IOU members about what worked and didn't work well in these services.

IOU sought more information on foster youth and mental health from local experts such as Lana Stohl, Director of Utah's Division of Substance Abuse and Mental Health, Cosette Mills, Division of Child and Family Services, Lori Cerar, Allies for Families, and Carol Anderson, from the Utah State Office of Education. Stohl presented information illustrating the importance of early intervention for children with mental illness, to avoid more intensive services later. Mills outlined for the group the recent changes in Medicaid rules that required mental health treatment to occur in smaller 16-bed settings.

Cerar explained how the Family Resource Facilitators throughout the state are available to help families navigate the complex system of treatment providers, government agencies and courts.

Anderson discussed Utah statistics regarding youth suicide and noted that 63% of the students who committed suicide had a prior referral to Juvenile Court. IOU saw a need to support the many valuable initiatives already underway in Utah's mental health community.

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IOU also heard a presentation from Utah Department of Health Nurse Chris Chytraus, who explained that each child in foster care is assessed for mental health issues as part of their general health care. She set forth the key challenges for these youth as 1) the need to coordinate among different services, 2) difficulty getting children into mental health facilities, 3) problems in managing the youth's medication, and 4) lack of follow up from caregivers as to medication management.

Karen Crompton, Director of Voices for Utah Children, presented to IOU on the need for Utah's Medicaid plan to provide "presumptive eligibility" for children in foster care who are returning home. Rather than losing their Medicaid coverage immediately upon leaving care, the children could be considered eligible while in transition and this would prevent disruption in their medication or services.

- Supported "presumptive eligibility" for Utah's foster children leaving care, so they could retain their Medicaid coverage while in transition.

- Trained Family Resource Facilitators in July, 2011 on Juvenile Court practice and how to best partner with Juvenile Court when serving Utah's children with mental health issues.

- Trained Judges on Family Resource Facilitators and how to use them as part of the team built around a child who is involved with Juvenile Court.

- Included sessions at the Juvenile Judges' 2011 Conference on Trauma-Informed Care and Youth Suicide and a session at Judges' Annual 2011 Conference on court-involved individuals with mental health issues.

- Worked with the Foster Care Foundation to improve foster parents' access to mental health resources, particularly around medication management.

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Transition to Adult Living Subcommittee

Children who "age out" of foster care when they turn 18 without being adopted have unique and challenging needs. Losing support structures from the state can present them with insurmountable obstacles. These young adults can lack the typical resiliency found in a traditional family. Youth may need job training, have low or no income, and may have no place to live. Former Utah Governor Olene Walker stated, "I felt we could do far better. I'm very pleased that the private sectors, the agencies, the public sectors, and everyone jumped in to make a difference in helping these kids."

With the support of the TAL Subcommittee, the Utah Legislature passed H.B. 122 Driver License – Application of Minor Amendments (Rep. David Litvack, 2008). This provided, with legal guardian/care giver consent, a more equitable and responsible route for youth in foster care to access an essential mode of transportation.

IOU and the Department of Workforce Services hosted "Door Opener" luncheons with the business community. These efforts helped pair foster youth with key business leaders, benefiting the youth with possible employment connections.

> "A real difficulty for youth in foster care was obtaining a driver license. We learned about problems that needed solving through the statutory process. The more we worked as a group, the more optimistic people became about the situation."
>
> Justice Christine M. Durham
> Former State Supreme Court Chief Justice

IOU's partnering with community leaders has been the key factor in the committee's efforts. For example, IOU partnered with Utah's non-profit Christmas Box House International. The TAL Subcommittee originally gave Christmas Box House International $10,000 in funds to try out their "Life Start Boxes." These kits provide youth leaving foster care with basic daily items like pots, pans, sheets, and towels. The Christmas Box House International's Life Start Boxes were so successful the group was able to expand access to surrounding states.

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- Formulated and promoted the passage of H.B. 122 Driver License - Application for Minor Amendments with Representative David Litvack in 2008. The bill improved foster youth's ability to obtain a driver license with consenting care giver permission.

- Hosted "Door Opener" meetings with foster youth and local business leaders allowing the groups to meet each other.

- Provided access to grant funding to Utah's non-profit The Christmas Box House International to create "Life Starter Boxes." These kits provide basic supplies for youth transitioning out of protective care.

"We heard from youth in foster care that they weren't getting the same career opportunities as their peers. At Department of Workforce Services we had an opportunity to bring some of the state's best employers in and pair them up with youth in foster care. This helped both groups to see what the other one had to offer, and influenced the kids to set ambitious employment goals for themselves."

Tani Pack Downing
Former Executive Director
Department of Workforce Services

"Our biggest focus has been that these kids still need someone they call family. We don't want them aging out without any connections."

Lisa McDonald
Executive Director
Christmas Box International

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Mentoring

IOU members saw teenaged youth in foster care that needed an adult to mentor them and guide them in making good choices. While DCFS was doing an excellent job of teaching life skills, more personal attention was needed to relationships. The IOU Commission brought impassioned youth advocates from various state agencies and the community to the same table to create team building around this issue.

Dorothy Dart is one example of an individual from the community coming forward to make a difference. After hearing from the transition to adult living (TAL) youth, she was so moved she then went on to organize mentor groups through the Salt Lake's First Presbyterian Church. This group became the non-profit Utah Youth Mentor Project.

> "I wanted to get involved because living in a foster home you feel that you're not really paid attention to because there are so many other kids. Having someone who is there to listen and help you is worth more than anything."
>
> Skylar
> Former Youth in Foster Care

The Utah Youth Mentor Project has matched over 138 foster youth with trained mentors in a two-year commitment to provide support during transitioning from foster care to independence. These mentors are the supportive difference for these kids and can result in life-long friendships. The Utah Youth Mentor Project has also been pivotal in securing transitional housing vouchers for youth with no place to live after leaving foster care.

Youth involved in the Utah Youth Mentor Project have better outcomes when compared to their non-mentored peers. The Utah Youth Mentor Project notes that their mentored youth experience fewer incidents of arrests, homelessness, substance abuse, and pregnancy, as well as an increase college attendance rates.

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- Spurred on the creation of the Utah Youth Mentor Project, a private non-profit organization which assists youth aging out of foster care with trained mentors. The Utah Youth Mentor Project has been a key advocate for housing and teaching life skills such as money management to foster youth aging out of state care.

- Provided access to Court Improvement Program funding to the Utah Youth Mentor Project. This funding assisted in the creation of a financial decision game to help inspire critical thinking on tough life decisions. The financial decision game is made available to any interested group.

- Raised the issue of the importance of mentors being available to youth in protective care and after aging out of the system.

"We wouldn't be an organization without the community support and IOU support. When Katie Gregory from Juvenile Court writes a letter of support it carries a lot of weight. The legitimacy that IOU gives our program is what makes it work. Through bridge building we got to work with agencies and received credence."

Dorothy Dart
Utah Youth Mentor Project Founder

Future Challenges

Utah's child protection community has made progress, benefitting from the progressive efforts of state agencies and community partners. The Court used its unique position of authority to advocate for youth in foster care and the families involved. However, child protection agencies and community partners remain concerned about several challenges still facing foster youth.

> "In the future we must ask ourselves if we have the passion and desire to make a difference with youth in foster care that don't have someone advocating for their very fundamental needs. Count me in on this challenge."
>
> Ray Wahl
> Deputy State Court Administrator

- Recent analysis of at-risk children indicates the measure of "economic well-being" has drastically decreased since the Great Recession. The erosion of these hard-fought gains is concerning for youth advocates and it remains unclear if this will have future spillover effects that might increase the need for child protection.

- Utah agencies and the public must remain focused on improving youth's education outcomes. Progress will come from efforts to increase GPAs and CASA education advocates and decrease mobility and administrative barriers.

- Recruiting more mentors has greatly benefited the efforts of Utah's Youth Mentor Project. Providing more community mentors to youth will continue to benefit the state and provide positive role models.

- Fluctuations in year-to-year foster care admissions should be expected. While one year may provide favorable measures of decreased foster care, this may not dictate that the following year will necessarily have similar results. Stakeholders and the state legislature must remain proactive in meeting these unexpected increased needs The community must continue to come to grips with the critical needs of foster youth and should fund it accordingly, even while helping families become stronger.

Future Challenges

- Youth in foster care, adoptive families, and transitioning young adults require community support to succeed. Keeping the public informed of the unique plight faced by children in protective services must remain a top priority.

- Drug abuse remains a threat to Utah's children and a concern for youth protection services.

- Youth advocates are hopeful that mental health care for youth in state care will receive more legislative attention and action.

- We need more foster families, especially more with diverse cultural backgrounds, including tribal connections.

- We need more resources for foster parents to meet children's special needs.

How can you get involved?

Utah Youth Mentor Project
youthmentorproject.org
699 E. South Temple Suite 370
Salt Lake City UT 84102
(801) 755-3735

Christmas Box House
thechristmasboxhouse.org
3660 S. West Temple
Salt Lake City UT 84115
(801) 747-2201

Foster Care Foundation
utahfostercare.org
5296 S Commerce Dr. #400
Murray UT 84017
(801) 994-5205

Grandfamilies
Children's Service Society
cssutah.org
124 S 400 E Suite 400
Salt Lake City UT 84114
(801) 355-7444

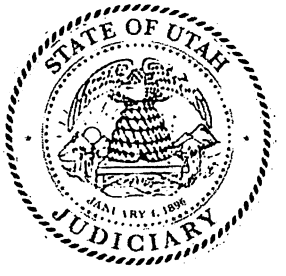
Voices for Utah Children
utahchildren.org
747 E South Temple Suite 100
Salt Lake City UT 84102
(801) 364-1182

Allies with Families Utah
allieswithfamilies.org
505 E 200 S #25
Salt Lake City UT 84102
(801) 433-2595

Court Appointed Special Advocates
utahcasa.org
450 S. State
Salt Lake City UT 84114
(801)5 78-3962

Just For Youth
justforyouth.gov
(801) 707 9734

The Utah Administrative Office of the Courts would like to acknowledge the outstanding efforts of Ryan Carrier and Misty Butler in researching, writing, designing and producing this publication on behalf of the IOU Commission.



UTAH STATE COURTS

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Salt Lake City, UT 8411

(801) 578-3800
www.utcourts.gov

TAB 8

Administrative Office of the Courts
Mr. Rick Schwermer
Assistant State Court Administrator
450 South State Street
P.O. Box 140241
Salt Lake City, UT 84414-0241

RE: Uintah/Huntsville Justice Court

Dear Mr. Schwermer:

We are formally requesting approval to transfer Huntsville's criminal, traffic, and ordinance violations to the Uintah Justice Court. Currently, Huntsville Town receives service from the Roy City Court. Huntsville Town feels it is would be in our best interest to contract with a city which is in closer proximity to the corporate limits of Huntsville Town. Uintah City and their court meet the certification requirements promulgated by the Judicial Council. Uintah City has agreed to provide all of the required court services for Huntsville Town and meets all of the State of Utah Code requirement.

Originally, a request was sent in May 2010, asking for approval which was approved by the Judicial Council in July 2010. The two entities have been work to accomplish the long time goal to transfer all of the Huntsville Towns violations to Uintah Justice Court.

We are current at the point where there is agreement with everyone including the Weber County Sheriff's Department and Roy City. All parties are prepared to make the move right away and request that it go on your next agenda for approval.

Sincerely,

Mayor Jim Truett
Huntsville Town

Mayor Sue Bybee
Uintah City

TAB 9

To: Judicial Council
From: Elizabeth Knight, Director of the Office of Guardian ad Litem
Date: 5/16/2013
Subject: Guardian ad Litem Oversight Committee Appointments

Thank you for your consideration of the applicants for the GAL Oversight Committee. The Judicial Council Management Committee has recommended that Michael Jorgensen, Angela Fonnesbeck and Karen Flynn be appointed to the GAL Oversight Committee.

Administrative Office of the Courts

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

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

MEMORANDUM

To: Judicial Council
From: Tim Shea
Date: May 15, 2013
Re: Committee appointments

The Management Committee recommends that Nidia Pendley be appointed to replace Dinorah Padro on the Court Interpreter Committee her. The vacancy is reserved for a certified interpreter. After sending an announcement to all certified interpreters, we received two applications. Ms. Pendley's and Luther Gaylord's. Both are attached.

Also, the Management Committee recommends that Judge Rick Smith be appointed to replace Judge Mary Noonan on the Committee

TAB 10

Administrative Office of the Courts

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

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

MEMORANDUM

To: Policy and Planning Committee
From: Tim Shea
Date: May 6, 2013
Re: Rules for comment

The Policy and Planning Committee recommends that the following rules be published for comment.

Rule summary

CJA 04-0202.02. Records classification. Classifies the addendum to an appellate brief in a case involving termination of parental rights or adoption as a private record. Establishes the classification of a "safeguarded" record and which records are safeguarded records. Describes when jurors' names are public, private or safeguarded.

CJA 04-0202.03. Records access. Describes who has access to safeguarded records. Modifies who has access to the juvenile court social file.

Encl. Draft rules

Rule 4-202.02. Records classification.

Intent:

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

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

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

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

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

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

(2)(D) audit reports;

(2)(E) case files;

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

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

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

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

(2)(J) financial records;

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

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

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

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

(2)(K)(iv) case status;

(2)(K)(v) civil case type or criminal violation;

(2)(K)(vi) civil judgment or criminal disposition;

(2)(K)(vii) daily calendar;

(2)(K)(viii) file date;

(2)(K)(ix) party name;

(2)(L) name, business address, business telephone number, and business email address of an adult person or business entity other than a party~~, but the name of a juror or prospective juror is private until released by the judge~~;

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

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

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

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

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

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

(2)(R) opinions, including concurring and dissenting opinions, and orders entered in open hearings;

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

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

(2)(U) probation progress/violation reports;

(2)(V) publications of the administrative office of the courts;

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

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

(2)(Y) record or minutes of an open meeting or hearing and the transcript of them;

(2)(Z) record of formal discipline of current or former court personnel or of a person regulated by the judicial branch if the disciplinary action has been completed, and all time periods for administrative appeal have expired, and the disciplinary action was sustained;

(2)(AA) record of a request for a record;

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

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

(2)(DD) 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)(EE) statistical data derived from public and non-public records but that disclose only public data;

(2)(FF) 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) 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; and

(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) The following court records are private:

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

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

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

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

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

(4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under Section 30-2-11 is public;

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

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

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

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

(4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

(4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) aggregate records other than public aggregate records under subsection (2);

(4)(D) alternative dispute resolution records;

(4)(E) applications for accommodation under the Americans with Disabilities Act;

(4)(F) citation, but an abstract of a citation that redacts all non-public information is public;

(4)(G) judgment information statement;

(4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;

(4)(I) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;

(4)(J) the following personal identifying information about a person other than a party: residential address, personal email address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(K) medical, psychiatric, or psychological records;

(4)(L) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(L)(i) name change of a minor;

(4)(L)(ii) guardianship or conservatorship for a minor;

(4)(L)(iii) felony, misdemeanor or infraction;

(4)(L)(iv) child protective orders; and

(4)((L)(v) custody orders and decrees;

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

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

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

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

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

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

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

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

(4)(S) victim impact statements;

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

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

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

(4)(W) an addendum to an appellate brief filed in a case involving termination of parental rights or adoption;

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

(5) The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed

by the courts, and records prepared solely in anticipation of litigation or a judicial, quasi-judicial, or administrative proceeding;

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

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

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

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

(5)(F) court security plans;

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

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

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

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

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

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

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

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

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

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

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

(5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration, probation or parole;

(5)(O) record the disclosure of which would jeopardize life, safety or property;

(5)(P) search warrants and search warrant affidavits before the filing of the return;

(5)(Q) strategy about collective bargaining or pending litigation;

(5)(R) test questions and answers;

(5)(S) trade secrets as defined in Utah Code Section 13-24-2;

(5)(T) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(U) presentence investigation report; and

(5)(V) other records as ordered by the court under Rule 4-202.04.

(6) The following are juvenile court social records:

(6)(A) correspondence relating to juvenile social records;

(6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;

(6)(C) medical, psychological, psychiatric evaluations;

(6)(D) pre-disposition and social summary reports;

(6)(E) probation agency and institutional reports or evaluations;

(6)(F) referral reports;

(6)(G) report of preliminary inquiries; and

(6)(H) treatment or service plans.

(7) The following are juvenile court legal records:

(7)(A) accounting records;

(7)(B) discovery filed with the court;

(7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;

(7)(D) name of a party or minor;

(7)(E) record of a court hearing;

(7)(F) referral and offense histories

(7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) The following are safeguarded records:

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

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

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

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

Rule 4-202.03. Records access.

Intent:

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) Any person may access a public court record.

(2) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.

(3) The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party or attorney for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

(4)(F) a party or attorney for a party to litigation in which the record is filed;

(4)(G) anyone by court order;

(4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

(4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) The following may access a juvenile court social record:

~~(5)(A) all who may access private records, except that a juvenile court competency evaluation, psychological evaluation or sex behavior risk assessment may be accessed only with the approval of a juvenile court judge, who will permit access required by due process of law in a manner that serves the best interest of the child;~~

~~(5)(B) a prosecuting attorney;~~

~~(5)(C) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record in the juvenile justice system or criminal justice system;~~

~~(5)(D) the Department of Human Services, school districts, and vendors with whom they or the courts contract (who shall not permit further access to the record) but only for court business.~~

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) anyone by court order.

(5)(M) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

(5)(M)(i) the subject of the record, if age 18 or over;

(5)(M)(ii) an attorney or person with power of attorney for the subject of the record;

(5)(M)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(M)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(M)(v) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(M)(vi) anyone by court order.

(5)(N) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

(6) The following may access a juvenile court legal record:

(6)(A) all who may access the juvenile court social record;

(6)(B) a law enforcement agency;

(6)(C) a children's justice center;

(6)(D) a public or private agency providing services to the subject of the record or to the subject's family; and

(6)(E) the victim of a delinquent act may access the disposition order entered against the defendant.

(7) The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10.

~~(7)~~ (8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

~~(8)~~ (9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

ADDITIONAL HANDOUTS AT THE MAY 20, 2013

JUDICIAL COUNCIL MEETING

Motion to further amend Rule 4-202.02.

The May 3 draft of Rule 4-202.02 is behind Tab 10.

Judge Gregory Orme moves the following further amendments to Rule 4-202.02. and that the rule as further amended be published for comment:

1. Line 37. After "party" insert "or a victim or witness of a crime."
2. Line 137. After "party" insert "or a victim or witness of a crime."
3. Line 252. Add:

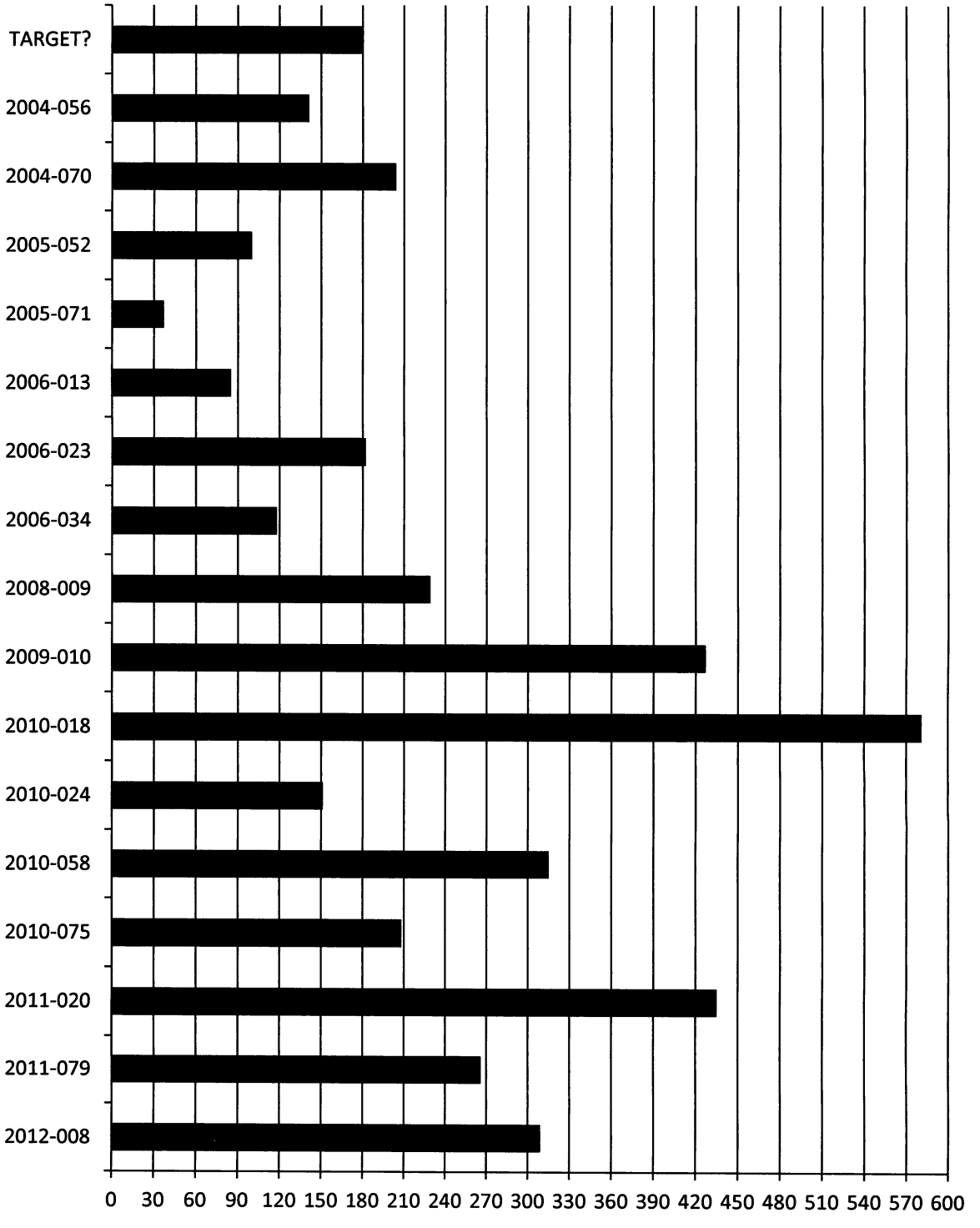
   (8)(E) the following information about a victim or witness of a crime:

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

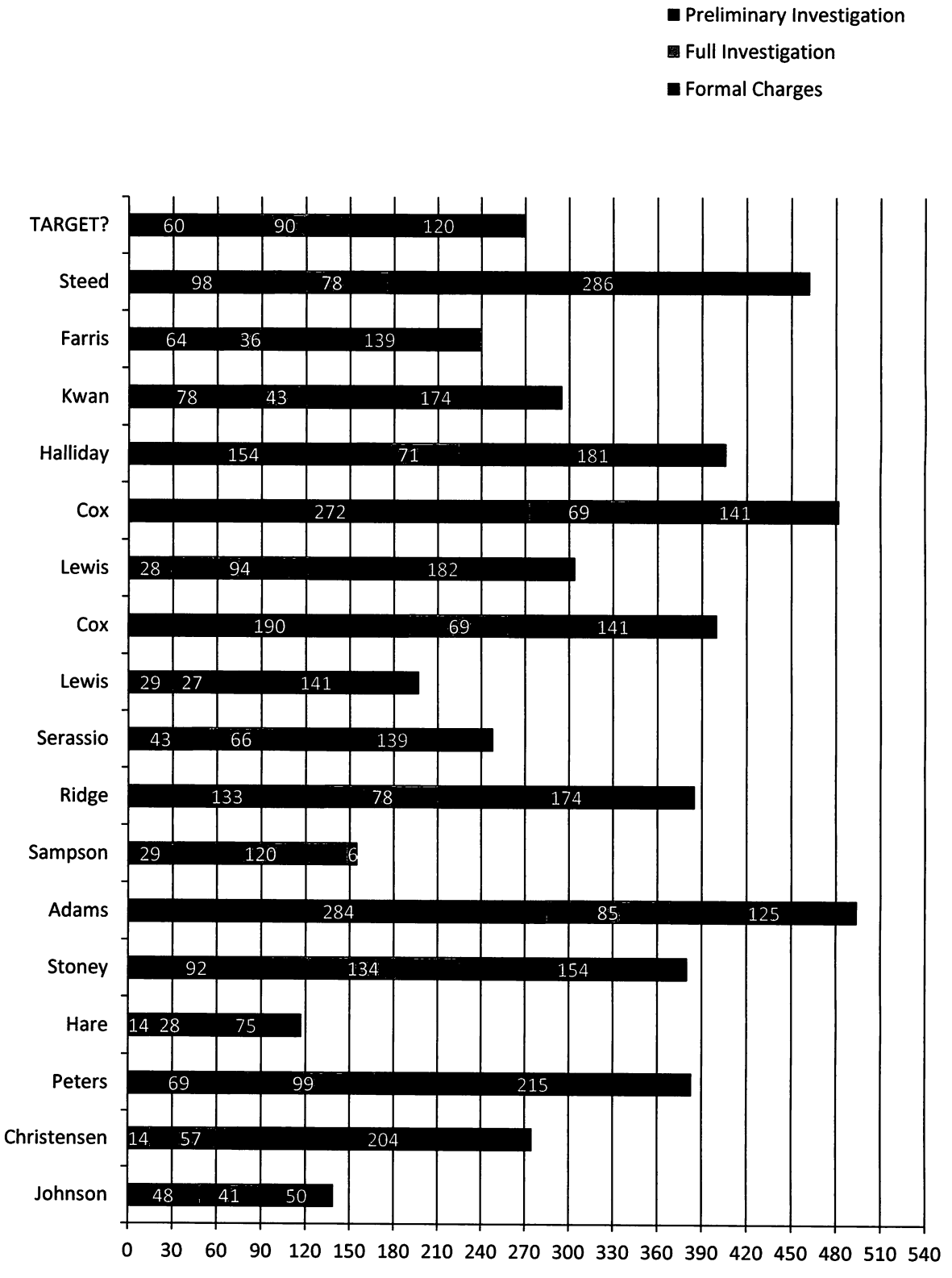
   (8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

Currently, contact information and indentifying information of victims and witnesses of a crime is classified the same as that of any other non-party: some is public and some is private. A classification of private keeps the information out of the hands of the public, but the defendant still has access, which may be cause for concern. Section 77-38-6 says that a victim or witness of a crime cannot be compelled to testify about information such as this. This amendment would include records with this information in the new classification of "safeguarded." Under the separate proposed amendments to Rule 4-202.03, parties will not have access to safeguarded records.

DISPOSITION TIMES FOR DISMISSALS WITH WARNING
(from receipt of complaint to DWW)
FY03 through FY12



DISPOSITION TIMES FOR PUBLIC SANCTION CASES
(from receipt of complaint to dispostion)
FY03 through FY12



Board of Juvenile Court Judges Goals

September 2012 – August 2013

Goal 1 – Design "Best Practices" guide regarding juvenile court practices on immigration

a) Finalize draft toolkit identifying best practices for dealing with these issues and create bench kit.
Responsible person: Judge Michelle Heward/ Judge Larry Jones, Neira Siaperas
Time Frame: Board Reviews Draft-December, 2012 (Completed)

b) Distribute bench kit to bench, attorneys, caseworkers and other users.
Responsible person: Judge Michelle Heward, Neira Siaperas
Time Frame: Spring, 2013 (Electronic and Print Release: June, 2013)

Goal 2 – Implement first year of Juvenile Court Two Year Electronic Conversion Plan.

a) The Electronic Conversion Workgroup (ECG), under judicial leadership, will continue to address equipment, partners, bench communication, training, IT resources, records quality and CARE programming issues within plan.
Responsible person: Judge Mark May, Judge Karla Staheli, Judge Mary Noonan, Lisa-Michele Church
Time Frame: Ongoing throughout year (See May 2013 Update Report)

b) Judges will give input on design and pilot Judicial Workspace Phase I
Responsible person: Judges May, Noonan, Staheli, Lyman, Noland
Time Frame: Spring 2013 (Completed-Workspace in use)

c) Receive ongoing reports from Ron Bowmaster and other IT experts on resource allocation to address juvenile court needs.
Responsible Person: Board, Lisa-Michele Church
Time Frame: Ongoing throughout year (Continuing)

Goal 3 – Improve permanency for older youth.

a) Seek input from judges and Court Improvement members on effective court practices with older youth
Responsible person: Judges Lindsley and Bazzelle, Lisa-Michele Church, Katie Gregory
Time Frame: Nov-Jan, 2013 (Completed)

b) Challenge one judge in each district to pilot an effective court practice with older youth and present to entire bench at April conference.
Responsible person: Judges Lindsley and Bazzelle, Lisa-Michele Church, Katie Gregory

Time Frame: Pilot from Jan to April, report in April, 2013
(March 2013: All juvenile judges received a list of their cases involving youth with individualized permanency (IP) as a primary permanency goal. April 2013 Bench meeting: Launched project requesting judges to review listed cases in court by September 2013 for appropriateness of IP goal. IP Bench card released to all judges at Bench meeting for use in IP review hearings.)

c) Identify training needs of Tribes, Foster parents, other groups when serving older youth
Responsible person: Judges Lindsley and Bazzelle, Misty Butler, Katie Gregory
Time Frame: Spring 2013 (Superseded by review project described in (b) above.)

Goal 4: Give input to Juvenile Sentencing Guidelines Revision Committee

a) Support Juvenile Court Probation staff in presenting to Committee on probation sentencing recommendations
Responsible person: Judge Janice Frost, Lisa-Michele Church, Neira Siaperas, PO Chiefs
Time Frame: November-December, 2013 (Completed)

b) Judges presenting to Committee on judicial sentencing practices
Responsible person: Judge Frost, Judge May (Completed)
Time Frame: December, 2013

c) Hear from Jacey Skinner at Board meeting on guidelines revisions
Responsible person; Lisa-Michele Church
Time Frame: Spring, 2013 (Completed)

d) Give input to guidelines revisions committee prior to issuance of recommendations
Responsible Person: Judge Frost, Judge May
Time Frame: Spring 2013 (Input completed: issuance of recommendations by Revision Committee is pending.)

Juvenile Court Electronic Records update: May 2013

Programming	Completion Date
Judicial Workspace	
• Beta testing with 5 juvenile judges and their staff	March 18, 2013
• Released judicial workspace to all juvenile judges and staff	April 17, 2013
Two-year e-records plan	
• Updated first quarter 2013. Board approved in April 2013	April 17, 2013
CARE programming priority list	Deploy 5/12/2013
• Updated dates, coordinated with the two-year plan (CORE team)	March 2013

Training	Completion Date
Online Training Program (OTP)	
• Judicial Workspace OTP training released to judges and staff with written guide	March 28, 2013
• Basic CARE, Signing Documents, Issuing Orders OTP modules in use	January 2013
• OTP training modules for partners	May 2013
Hands-on Training	
• Judicial Workspace for CARE trainers by IT	March 12, 2013
• Judicial Workspace for pilot judges / staff by IT	March 18, 2013
• Judicial Workspace for other judges / staff by CARE trainers	April 2013
• Other CARE training for judges/staff by CARE trainers	On-going
• Partners CARE training by CARE trainers	On-going
Started in most districts - CARE trainers currently assessing needs in other districts.	

Equipment Needs	Completion Date
Judges - *bench and chambers' equipment ordered*	April 2013
Probation / Clerical - *some additional monitors and equipment ordered*	March 2013

Communication / Meetings	Completion Date
Bench	
• ECG judges will visit each district and seek input on e-conversion progress	Fall 2013
• Brody presented to all Juvenile Judges on e-records issues at bench meeting	April 19, 2013
ECG committee will meet for update	May 13, 2013
CARE User Group will approve programming requests	April 10, 2013
CORE / E-filing consistency will prioritize programming requests and standardize best practices	May 21, 2013
CARE Trainers are training and supporting roll-out of Judicial Workspace to all districts	Apr/May 2013

Staffing Impacts	Completion Date
E-filing savings report details how staff will be affected by e-conversion	December 2013
Ongoing review of all clerical vacancies statewide (district and juvenile)	Meetings twice a month
10.5 positions eliminated statewide as of February 2013; total of 6 positions will be eliminated from juvenile court by 2014.	

Filing Partners	Completion Date
Outreach (CARE trainers, ECG committee)	
• Partner matrix draft created and circulated	January 2013
• District outreach and partners' training under way	In process
• Form a partners workgroup (CORE team subgroup)	May 2013
Partners E-filing and E-records website	
• Website under construction	May 2013
• Created Instructions on requesting CARE access and training, User Agreement forms, and CARE Training Certificate forms	May 2013
Created the CARE Access table showing available internal/external CARE roles	November 2012

Access in CARE availability (direct/interface)

- DA, AG, defense, GAL, DCFS, JJS can access cases and documents in CARE via CARE roles or interfaces. Currently working on refining uploading roles and capabilities to upload via interfaces. — In process
- ECG members presented on CARE capabilities to AG conference — April 17, 2013

CARE Roles created (View, Uploading, etc.)

- AG, DA, Defense (firm / private) - can upload and/or file delinquency petitions and other documents in CARE. — November 2012
- JJS uploading role – *pilot underway in 1st district* — In process

Create a table showing current filing capabilities in juvenile court — January 2013

- Will update quarterly — April 2013

Filing through Interfaces

- GAL (file documents through VOICE) — Requested programming
- DCFS (file documents through SAFE) — Requested programming
- Discussing e-filing options and interface request from AG — April-June 2013

Private filers – access through OCAP — June 2014

E-filing Quality Assurance Efforts	Completion Date

E-filing Consistency

- Initial meeting to determine scope of work — January 2013
- E- filing Best Practices document drafted — Out for feedback
- Establishing external e-filing quality assurance process for documents directly filed in CARE by partners — May 2013
- Data quality assurance will be an ongoing effort

Formed a QA work group headed by Raechel Lizon (CORE subgroup) — March 2013

Protection of Records

- Restrict access on a document level per Court Rules — On-going
- Established expungement and adoption processes in the electronic environment — April 2013
- Review purging and retention of records in CARE — June 2013
- Protect victim records – new category created in CARE — February 2013

Measures of E-conversion Progress	Completion Date

How many juvenile judges are trained and using judicial workspace? — June 2013

TWENTY SEVEN judges and their teams have been trained in person.

How many juvenile judges are using electronic child welfare warrants? — April 2013

All TWENTY EIGHT judges are using child welfare e-warrants.

How many juvenile judges are digitally signing delinquency orders in court? — April 2013

TWENTY ONE judges are consistently signing all delinquency orders during the court hearing (unless something unusual occurs during the hearing). THREE judges are signing delinquency orders on reviews only, and FOUR judges are not signing orders in court.

How many external CARE Users have CARE access?

- Identify current partner users in each district — March 2013

990 JJS users (706 logged into CARE since January 2013); 229 Attorney Firm Users (131 logged into CARE since January 2013); 16 Private Attorney Users (7 logged into CARE since January 2013)

- Monitor increase in number of users (quarterly) — June 2013

How many users are e-filing into CARE?

- Identify current e-filers in each district — March 2013

Most partners file by emailing documents to the Court. Currently, two community partners directly upload into CARE.

- Monitor increase in number of e-filers (quarterly) — June 2013

Track types of cases e-filed into CARE

- Identify types of documents/cases e-filed — May 2013
- Monitor increase in documents / cases e-filed (quarterly) — June 2013