

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
November 4, 2022: 9 am

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge David Connors, <i>Chair</i>	•		Paul Barron Keri Sargent Nick Stiles Shonna Thomas Judge Keith Kelly Karl Sweeney Shane Bahr
Judge Suchada Bazzelle	•		
Judge Augustus Chin	•		
Judge Samuel Chiara	•		
Judge James Gardner	•		
			STAFF: Keisa Williams - excused Brody Arishita Minhvan Brimhall Stacy Haacke

(1) Welcome and approval of minutes:

Judge Connors welcomed committee members and new members, Judge Bazzelle and Judge Gardner, and guests. The committee considered the minutes from the September 2, 2022 meeting. With no changes, Judge Chin moved to approve the minutes as presented. Judge Chiara seconded the motion. Judge Gardner and Judge Bazzelle abstain. The motion passed unanimously.

(2-4) Rules back from public comment:

No action needed:

- CJA 4-208. Automated case processing procedures
- CJA 3-108. Judicial assistance
- CJA 4-403. Electronic signature and signature stamp use
- CJA 3-412. Procurement of goods and service

CJA 4-208, CJA 3-108, CJA 4-403, and CJA 3-412 have returned from the 45-day public comment period, having received no comments. The Judicial Council has already approved the rules. No action is needed by the committee.

Final approval (no amendments):

- Appendix B
- CJA 1-201. Justice Court Standards for Recertification
- CJA 1-302. Board of Judges Membership – Officers – Secretariat

Appendix B, CJA 1-201, and CJA 1-302 are ready for final approval by the Judicial Council with an effective date of May 1, 2023. No further amendments have been made to the rules.

With no further discussion, Judge Chiara moved to forward Appendix B, CJA 1-201, and CJA 1-302 as proposed to the Judicial Council for final approval. Judge Gardner seconded the motion. The motion passed unanimously.

Final approval (with amendments):

- CJA 4-202.04. Request to access a record associated with a case; request to classify a record associated with a case
- CJA 4-202.02. Records classification
- CJA 4-202.08. Fees for records, information, and services
- CJA 1-204. Executive committees

CJA 4-202.04:

Proposed amendments to CJA 4-202.04 clarify that requesters denied access to non-public court records associated with a case they are not authorized to access under rule 4-202.03 must file a motion or petition to access the record. The 45-day comment period for CJA 4-202.04 closed at midnight on November 3, 2022. One comment was received at 8:09 pm that evening by William Hains. Mr. Hains proposes five area of amendments in the rule.

1. Authorization to Access Records. The clarification in lines 23-24 is helpful and should be added to line 13 to specify that a request to access a non-public record should be directed to the clerk of court only when access is authorized by rule 4-202.03.

The committee agreed with those recommendations and modified the language in line 13 to correspond to those in lines 23-24.

2. Denial of Requests to Access Records. The addition of “public” before “record” on line 20 should be removed. Adding “public” inadvertently precludes relief for those who are entitled to access a non-public record but are mistakenly denied access by the court clerk. Subsection (1) directs those who are entitled to access records (either public or non-public) to request access from the clerk. Subsection (2)(A) currently authorizes all those who are denied access by a court clerk to file a motion for access. The proposed amendment would limit that relief to those who are denied access to public records. Subsection (2)(B) does not solve the problem because filing a motion is limited to those who are not authorized by rule to access the non-public record. Filing a motion would in effect be a concession that the person is not authorized under rule 4-202.03.

The committee agrees with Mr. Hains’ comments and recommended to remove “public” from line 20.

3. Petitions to Access Records. The rule currently specifies in Subsection (3) that for requests to reclassify a record, a motion is the appropriate vehicle when the court has jurisdiction over the case and a petition is the appropriate vehicle when the court no longer has jurisdiction. Logically, that same distinction should apply to requests to access a non-public record addressed under Subsection (2). But Subsection (2) doesn’t make that distinction—it speaks only of motions. The heading added on line 18 acknowledges the distinction, but it should also be specified in the body of Subsection (2).

Mr. Hain recommended that language be added to line 21 to address as follows: “if the court record is associated with a case over which the court has jurisdiction, or a petition to access the record if the court record is associated with a case over which the court no longer has jurisdiction.” The same language should then be added at the end of the sentence on line 24. The committee agrees with Mr. Hains’ recommendations and incorporated the proposed language to create a subparagraph 2(C), “A motion should be filed when the court record is associated with a case over which the court has continuing jurisdiction. A petition should be filed to access the record if the court record is associated with a case over which the court no longer has jurisdiction.”

4. Procedural Rules: Moving what was Subsection (5) into Subsection (3) has the effect of making the procedural rules inapplicable to motions and petitions to access records under Subsection (2). The procedural rules identified in Subsection (5) should apply both to requests to reclassify records, and to request to access records. It makes sense to move Subsection (5) above Subsection (4), but it should still be its own subsection, not nested under Subsection (3).

The committee agreed that language should be removed from subsection (3), but remain in subsection (5) as it is applicable to filing a motion in subsection (2). Language from subsection (5) moved and made as a new subsection (4) was titled as “Rules of Procedure Applicable to Motions and Petitions.” “Classify – Redact” is now subsection (5).

5. Service: The rule should require service to the person whose interests are protected by the non-public classification. For example, a crime victim is not a true “party” to an action but may have a privilege interest in records filed with the court such as medical and mental health records. The rule currently does not require any notice to such persons when someone seeks to access or reclassify such records. Because the person whose interests are protected may not always be known to someone seeking access or reclassification, the rule should require the court to provide notice to that person when the movant or petitioner certifies that the person is unknown. The rule should also clarify who is entitled to notice for petitions. The rule implicitly requires service on any parties when a motion is filed in a case over which the court has jurisdiction. (It does so by incorporating the applicable rules of procedure.) But it is not clear who, if anyone, is entitled to service in a case over which the court no longer has jurisdiction. (Who are the “parties” referred to in the rules of procedure? The parties in the underlying case? Or new parties to the petition?) At the very least, an advisory committee note could clarify that the parties to the original case should receive service when a petition is filed. But rule language would be preferable.

The Office of General Counsel does not recommend amendments adding procedural rules of service to the court’s administrative rules. Issues of service belong in the procedural rules, which are referenced in new subsection (4). Any comments for Mr. Hains’ item #5 could be referred to the Procedural Rules Committees to determine if changes are needed. Most of the procedural rules regarding service are in the civil rules, criminal rules, juvenile rules, and appellate rules of procedure.

The committee agreed with the recommendations from the General Counsel’s office and did not adopt Mr. Hains’ proposed changes regarding service.

With no further discussion or concerns, Judge Chiara moved to forward CJA 4-202.04 as amended to the Judicial Council with a recommendation that it be approved as final. Judge Gardner seconded the motion. The motion passed unanimously.

CJA 4-202.02:

Currently, CJA 4-202.02 is unclear as to what happens to a record previously designated as sealed if it is included in the overall record on appeal. The proposed amendment would allow sealed records to remain sealed even if included in the record on appeal. Records may be unsealed by court order. The rule received two comments during the comment period.

Nick Stiles stated that when a sealed record comes up on appeal, the record was previously not designated as sealed. Once on appeal the record could be designated as other than public and in the recent case before the Court of Appeals it was only accessible by the parties in the case. The rule amendment clarifies that a sealed record remains sealed on appeal. The amendments have been vetted and have the support of the appellate court bench. The rule does not need an expedited approval date.

Following discussion, the committee made no additional amendments. Judge Chiara moved to forward CJA 4-202.02 to the Judicial Council for final approval with a May 1, 2023 effective date. Judge Gardner seconded the motion. The motion passed unanimously.

CJA 4-202.08:

The proposed amendments to CJA 4-202.08 allow the court to charge requesters for the first 15 minutes of personnel time. “Impecunious” is changed to “indigent.” Indigent requesters are limited to one free copy of each record, after which they would be required to pay the standard rates. Exceptions can be made by the State Court Administrator.

Keri Sargent met with the Assistant Juvenile Court Administrator to update the language within the rule to reflect current availabilities of the court. The court may have older records retained on microfiche or VHS, but would likely no longer provide records in this medium when there is a request. Regardless of the medium in which they are stored, any records maintained by the court may be printed or placed onto a digital device and mailed to the requestor. The rule still provides for electronic medium and printed copies, as well as personnel time. Ms. Sargent discussed the changes with the clerks of court who support the proposed amendments. Ms. Sargent asked for an adoption date of January 1, 2023.

With no further discussion, Judge Chiara moved to send CJA 4-202.08 to the Judicial Council for final approval of the new amendments with an effective date of January 1, 2023. Judge Gardner seconded the motion. The motion passed unanimously.

CJA 1-204:

Proposed amendments to CJA 1-204 create court-level core teams and subcommittees of Policy, Planning, and Technology to assist the Committee in accomplishing its new technology responsibilities. One public comment was received. The comment recommended clarifying verbiage in the rule and adding a reference to two of the committee's advisory groups, which include a clerk of court from the District and Juvenile court levels. The subcommittee agreed that the recommendations made sense and incorporated them to the proposed rule change. Brody Arishita requested an expedited approval date of January 1, 2023 to allow time to gather the groups together to begin the work as outlined in the rule.

With no further discussion, Judge Chiara moved to send CJA 1-204 to the Judicial Council for final approval of the new amendments with an expedited effective date of January 1, 2023. Judge Gardner seconded the motion. The motion passed unanimously.

(5) CJA 6-501. Reporting requirements for guardians and conservators

CJA 6-501 was recently approved with amendments that went into effect November 1, 2022. Following the effective date, Ron Gordon received additional comments and recommendations for changes to the rule. The comments were from a person who appears to practice in corporate fiduciary work for guardianship and conservatorship cases. A requirement that all reporters submit court forms and an order on review would create consistency for judges when they are looking at guardianship and conservatorship cases. The subcommittee recommends moving paragraph (5) into paragraph (6) to clarify that everyone who files on the case needs to use the court approved forms, but they may also include their own report. The subcommittee also made a minor language correction in paragraph (2).

With no further discussion or concerns, Judge Chiara moved to forward CJA 6-501 as amended to the Judicial Council for a 45-day public comment period. Judge Bazzelle seconded the motion. The motion passed unanimously.

(6) CJA 3-406. Budget and fiscal management

The budget and fiscal management rule has not been updated to include the role of the Budget and Fiscal Management Committee which has a central role in budget review. This revision to CJA Rule 3-406 adds the BFMC role and makes other improvements to clarify the budget process.

The committee discussed the proposed amendments and recommended that capitalization of proper nouns is consistent throughout the rule. The committee also recommended that titles are written out completely prior to use of any acronyms. Karl Sweeney will make the changes and send an updated redline of the rule.

With no further discussion, Judge Chiara moved to forward CJA 3-406 to the Judicial Council for approval for a 45-day public comment period. Judge Bazzelle seconded the motion. The motion passed unanimously.

(7) CJA 3-104. Presiding judges

District Court Administrator, Shane Bahr, proposes amendments to rule 3-104 to require presiding judges to notify the appropriate state level administrator if a judge fails to submit a required case under advisement statement. If a judge fails to submit a required statement for two consecutive months, the state level administrator would be required to notify the Council. A report of cases under advisement is generated monthly and sent to the Presiding Judge (PJ) for review. The PJ and Mr. Bahr will contact the judge who has not completed cases that have gone beyond 90 days to determine what assistance can be provided to the judge. If compliance is not met, notification will be sent to the Management Committee and Judicial Council for recommendations of further action or assistance to the judge.

The committee discussed how notification should be handled and recommended changes to the proposed amendments based upon the procedures outlined in the rules and how these issues have been handled in the past with the Management Committee. Paragraph (3)(L)(v) was modified to read as, “. . the state level administrator shall notify the Management Committee Council.”

Following discussion, Judge Bazzelle moved to send CJA 3-104 as discussed and amended to the Judicial Council for approval for a 45-day public comment period. Judge Gardner seconded the motion. The motion passed unanimously.

(8) Request for rule amendments Mr. Eames:

- CJA 1-204. Executive committees
- CJA 4-202.07. Appeals

Mr. Eames sends a voluminous amount of emails to the court and Office of General Counsel requesting records and acknowledgment from the Court that they are subject to the Utah Open and Public Meetings Act (OPMA) found in the Utah Code. He is seeking amendments to rules CJA 1-204 and 4-202.07 “to end all the secrecy behind the judicial administrative actions it has taken and will result in a more open judiciary department.”

The General Counsel’s Office does not recommend any amendments in response to Mr. Eames’ petitions. The Administrative Office of the Courts (AOC) is in compliance with the OPMA and the Code of Judicial Administration already addresses the issues raised.

Following discussion, Judge Chiara moved to reject Mr. Eames’ recommendations and take no action on rules CJA 1-204 and 4-202.07. Judge Chin seconded the motion. The motion passed unanimously.

Technology report/proposals:

Mr. Arishita does not have anything to report at this time. Once CJA 1-204 has been approved by the Judicial Council with an effective date of January 1, 2023, Mr. Arishita will begin the process of putting core teams and subcommittees together to assist in accomplishing the new technology responsibilities. Mr. Arishita will provide an update at a future meeting.

Elect new committee chair:

Judge Connors will be retiring in March and therefore does not wish to put his name forth as committee chair. Judge Gardner and Judge Bazzelle also expressed their desires to pass on the role due to being newly appointed members of the committee. Judge Chin, in declining the role, nominated Judge Chiara as the new chair of the committee. Judge Gardner seconds the motion. The motion passed with a unanimous vote. Judge Chiara thanked the committee for their support.

Old Business/New Business:

- **2023 meeting schedule**

The committee discussed the December 2nd meeting. Judge Connors has a conflict that day and may not be able to attend. Judge Gardner has a trial scheduled that day but would be available for an hour during lunch. The December 2nd meeting will be held as scheduled if there are critical items to be discussed. If not, Judge Chiara and Ms. Williams may decide to cancel.

The committee discussed the meeting schedule for the 2023 year. There were no concerns with maintaining the meeting schedule for the first Friday of each month. Any modifications of the meeting dates may be discussed at later meetings.

With no concerns or further discussion, Judge Gardner moved to continue the 2023 meeting schedule to the first Friday of each month, unless modification is needed. Judge Chiara seconded the motion. The motion passed unanimously.

Adjourn: With no further items for discussion, the meeting adjourned. The next meeting will be held on December 2, 2022 at 12 PM via Webex video conferencing, unless otherwise noted.