

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING AGENDA
July 7, 2023 – 12:00 p.m. to 2:00 p.m.
Webex**

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Chiara
12:05	<u>Rules back from public comment:</u> <ul style="list-style-type: none"> • CJA 4-202.02. Records classification (<i>eff. 4/25</i>) • CJA 4-202.03. Records access • CJA 4-202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index • CJA 4-404. Jury selection and service 	Action	Tab 2	Keisa Williams
12:15	CJA 6-301. Authority of court commissioner as magistrate	Action	Tab 3	Keisa Williams
1:00	Technology report/proposals	Discussion		Brody Arishita
1:50	Old Business/New Business			
2:00	Adjourn			

2023 Meetings:

August 4, 2023	November 3, 2023 (all day)
September 1, 2023	December 1, 2023
October 6, 2023	

TAB 1

Minutes

June 2, 2023

**UTAH JUDICIALCOUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

Webex video conferencing
June 2, 2023: 12:00 p.m.

DRAFT

MEMBERS:

PRESENT

EXCUSED

GUESTS:

Judge Samuel Chiara, <i>Chair</i>	•	
Judge Suchada Bazzelle	•	
Judge Augustus Chin	•	
Judge Michael DiReda	•	
Judge James Gardner	•	

Keri Sargent
Paul Barron
Judge Fuchs
Chris Palmer

STAFF:

Keisa Williams
Brody Arishita
Minhvan Thach

(1) Welcome and approval of minutes:

Judge Chiara welcomed committee members to the meeting. The committee considered the minutes from the May 5, 2023 meeting. With no changes, Judge Gardner moved to approve the minutes as presented. Judge Chin seconded the motion. The motion passed unanimously.

(2) Adult Drug & MH court certification checklists

Judge Fuchs proposed amendments to presumed certification criteria #30 in all checklists that deal with adult drug and mental health courts. Judge Fuchs states in part, "The reason for the change would be that in Utah, by Statute, we require a plea before a participant may be put in a Problem-Solving Court. In most cases by the time a participant has an attorney appointed and discovery completed, more than 50 days have passed. In addition, in Utah we take individuals into the programs as a condition of a probation violation."

Judge Fuchs proposed the following language: "Clients are placed in the program as soon after an arrest, a plea, sentencing, or a probation violation as possible. It is understood that the sooner treatment starts the better the outcomes."

Judge Fuchs presented the proposed amendments to the Council in May. The Council recommended that the amendments be brought to the committee for discussion. Judge Fuchs noted that Utah cannot meet the '50 days after arrest' criteria and further recommended that the requirement be moved from the "Presumed Certification Criteria" section to the "Non-Certification-Related Best Practice Standards" section.

The committee discussed and recommended the following proposed amendments:

- Move item #30 from the "Presumed Certification Criteria" section and make it new item #17 in the "Non-Certification-Related Best Practice Standards" section.
- Renumber the items in the "Presumed Certification Criteria" section.

- Amend the language in the new #17 to read as follows: “Clients are placed in the program within 50 days after change of plea, sentencing, or a finding that a probation violation has occurred, or within a short period of time thereafter. The earlier treatment begins, the better the outcomes.”

With no further discussion, Judge DiReda moved to recommend to the Council that the amended language be changed from a “Presumed Certification Criteria” requirement to a “Non-Certification-Related Best Practice Standards” item. Judge Gardner seconded the motion. The motion passed unanimously. Judge Fuchs will present the proposed amendments to the Council.

(3) Back from public comment:

- **CJA 6-507. Court visitors**
- **CJA 3-414. Court security**

CJA 6-507:

No public comments were received. Below is a summary of the proposed amendments. No additional amendments were recommended.

1. replace “protected person” and “ward” with “respondent” where applicable;
2. clarify who may receive a court visitor report or notice (lines 68-75);
3. require the court visitor to file a Council-approved Order on Review form (lines 85-87);
4. delete the reference to language access because language access is addressed elsewhere in the Code of Judicial Administration (lines 59-62); and
5. provide the court with broad discretion in taking action on a report (lines 101-109).

The committee discussed and did not recommend additional amendments. With no further discussion, Judge Gardner moved to recommend to the Council that CJA 6-507 be approved as final with a November 1, 2023 effective date. Judge Chin seconded the motion. The motion passed unanimously.

CJA 3-414:

Of the 7 public comments received, 6 were from prosecutors or law enforcement officers objecting to the removal of “law enforcement official” from lines 199-200. When the committee discussed the rule draft in February, it was the understanding of the Office of General Counsel that the Judicial Council issued a statewide policy several years ago preventing prosecutors from carrying firearms in courthouses and that the Council’s policy was captured and enforced via local court security plans. With that understanding in mind, the Office of General Counsel did not intend for the removal of “law enforcement official” to have a substantive effect, but rather to provide clarification of existing policy.

The Office of General Counsel has since learned that, while the issue was discussed with the Judicial Council several years ago, the Council did not issue a statewide policy. Currently, local courts have the discretion to permit or prohibit the possession of firearms by prosecutors through their local court security plans and practices vary across the state. With that in mind, the Security Director and Office of General Counsel recommended leaving “law enforcement official” in the rule, allowing prosecutors to carry if possession is permitted by their local court security plans.

To Judge Brady’s point in his public comment, “court staff” and “court personnel” are used throughout the rule and are not necessarily intended to encompass the same people in each section. Following a discussion, the committee made the following amendments:

- (lines 68-70) amended to read: “(4)(C) The court executive shall make available a copy of the current local security plan to all judges, commissioners, court employees, volunteers, and security personnel.”

- (lines 71-72) amended to read: “(4)(D) The local plan shall clearly delineate the responsibilities between court employees, judges, court commissioners, and any individual issue court identification (“court personnel”) and law enforcement personnel for all areas and activities in and about the courthouse.”
- (line 276) change “court staff” to “court employees”
- (line 287) change “court personnel” to “court employees”
- (lines 300-304) amended to read: “Court personnel with a valid court-issued identification card may bypass security screening at any facility where they have been granted access.
- (line 305) change “will” to “shall”.

With no further discussion, Judge Gardner moved to recommend to the Council that CJA 3-414 be approved as final with a November 1, 2023 effective date. Judge DiReda seconded the motion. The motion passed unanimously.

(4) CJA 4-202.11. Vexatious record requester (NEW)

During the last session (S.B. 231), the legislature created a new code section (63G-2-209) under GRAMA that outlines a detailed process for government entities to petition the State Records Committee for relief from a person the government entity deems a “vexatious requester.” Under 63G-2-702(5), the section governing applicability of GRAMA to the judicial branch, the Judicial Council may now:

- (a) establish a process for an administrative unit of the judicial branch to petition for relief from a person that the administrative unit claims is a vexatious requester; and
- (b) establish an appellate board to hear a petition for relief from a person that an administrative unit of the judicial branch claims is a vexatious requester.

The court has its share of what may be considered vexatious requesters that utilize a considerable amount of staff time. As such, the Office of General Counsel is proposing a new rule. The Management Committee already hears records access appeals in accordance with Rule 4-202.07. It makes sense to follow a similar process by designating the Management Committee the “appellate board” to hear vexatious requester petitions and the Office of General Counsel the “administrative unit” authorized to petition for relief.

The rule draft is very similar to 63G-2-209, but the process is intended to be less formal, in keeping with how the Management Committee handles records access appeal hearings under 4-202.07.

The committee discussed and recommended the following amendments:

- Replace “petitioner” with “Office of General Counsel” throughout
- (line 16) replace “Management Committee” with “Committee”
- Replace “Judicial Council” with “Council”
- In (7)(B), if allowed under the code, remove the one-year limit on the Management Committee’s ability to waive response requirements.

With no further discussion, Judge Chin moved to send new rule CJA 4-202.11 to the Council, with a recommendation that it be published for a 45-day public comment period. Judge Gardner seconded the motion. The motion passed unanimously.

Technology report/proposals:

Judge Pullan and Brody Arishita believe the Tech Advisory group will need to meet more frequently than quarterly due to the increase in workload. That topic will be discussed at the next advisory subcommittee meeting in June.

The subcommittee will be working on the following projects:

- Email Retention
- Reviewing 5 Draft Policies
 - [Acceptable Use Draft Policy](#)

- [Information Security Draft Policy](#)
- [IT Information Security Risk Management Draft Policy](#)
- [IT Policies, Standards & Practices](#)
- [Software Development Draft Policy](#)
- Statewide Form for Audio Requests

IT is still working on updating the strategic plan and developing training on CyberSecurity. Both will go to the advisory subcommittee for review.

Old Business/New Business:

The committee will have a quorum at the July 7 meeting.

Adjourn: With no further items for discussion, the meeting adjourned at 1:15 pm. The next meeting will be held on July 7, 2023 at 12 PM via Webex video conferencing.

TAB 2

Back from Public Comment:

CJA 4-202.02. Records classification (*effective 4/25/23*)

CJA 4-202.03. Records access

CJA 4-202.05. Request to access an administrative record; research;
request to classify an administrative record; request to create an index

CJA 4-404. Jury selection and service

Notes:

Rule 4-202.02 - One public comment was received. The commenter was in favor of the amendments and did not recommend further changes. This rule was approved on an expedited basis and is currently in effect. Unless PP&T makes additional edits, no action is required.

Rule 4-202.03 – No public comments were received. Recommend that it be approved as final with a November 1, 2023 effective date.

Rule 4-202.05 – No public comments were received. Recommend that it be approved as final with a November 1, 2023 effective date.

Rule 4-404 – No public comments were received. Recommend that it be approved as final with a November 1, 2023 effective date.

**Rule 6-501 is also back from comment. It will be addressed at the August PP&T meeting.*

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) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** 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) appellate filings, including briefs;

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

(2)(E) audit reports;

(2)(F) case files;

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

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

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

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

(2)(K) financial records;

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

(2)(L)(ii) attorney name;

(2)(L)(iii) licensed paralegal practitioner name;

(2)(L)(iv) case number;

(2)(L)(v) case status;

(2)(L)(vi) civil case type or criminal violation;

(2)(L)(vii) civil judgment or criminal disposition;

(2)(L)(viii) daily calendar;

(2)(L)(ix) file date;

(2)(L)(x) party name;

(2)(M) name, business address, business telephone number, and business email address of an adult person or business entity other than a party or a victim or witness of a crime;

(2)(N) 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)(O) name, business address, business telephone number, and business email address of a lawyer or licensed paralegal practitioner appearing in a case;

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

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

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

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

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

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

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

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

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

(2)(BB) 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)(CC) record of a request for a record;

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

(2)(FF) search warrants, the application and all affidavits or other recorded testimony on which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

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

(2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or information is filed charging a person 14 years of age or older with a felony or an offense that would be a felony if committed by an adult, the petition, indictment or information, the adjudication order, the disposition order, and the delinquency history summary of the person are public records. The delinquency history summary shall contain the name of the person, a listing of the offenses for which the person was adjudged to be within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

(3) Sealed Court Records. The following court records are sealed:

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

(3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six months after the conclusion of proceedings, which are private until sealed;

(3)(A)(iii) Section 76-7-304.5 – Consent required for abortions performed on minors; and

(3)(A)(iv) Section 78B-8-402 – Actions for disease testing;

(3)(B) expunged records;

(3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section 77-23a-15;

(3)(D) records showing the identity of a confidential informant;

(3)(E) records relating to the possession of a financial institution by the commissioner of financial institutions under Utah Code Section 7-2-6;

(3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

(3)(G) records designated as sealed by rule of the Supreme Court;

(3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal proceedings;

(3)(I) on appeal, any record previously designated as sealed by another court; and

(3)(J) other records as ordered by the court under Rule 4-202.04.

(4) Private Court Records. The following court records are private:

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

(4)(A)(i) Section ~~62A-15-631~~26B-5-332, Involuntary commitment under court order;

(4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;

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

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

(4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment; ~~and-~~

(4)(A)(vi) Section 26B-8-111, Sex designation changes, and name changes combined with sex designation changes for both minors and adults, except that:

(4)(A)(vi)(a) the case history is public for minors; and

(4)(A)(vi)(b) the case history and record of public hearings are public for adults.

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

(4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, 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)(~~iii~~iv) Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;

(4)(B)(~~i~~iv) 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)(~~viii~~x) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

(4)(C) records related to determinations of indigency;

(4)(D) an affidavit supporting a motion to waive fees;

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

(4)(F) alternative dispute resolution records;

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

(4)(H) jail booking sheets;

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

(4)(J) judgment information statement;

(4)(K) judicial review of final agency action under Utah Code Section ~~62A-4a-1009~~80-2-707;

(4)(L) 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)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: 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)(N) medical, psychiatric, or psychological records;

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

(4)(O)(i) name change of a minor, unless the name change is combined with a sex designation change;

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

(4)(O)(iii) felony, misdemeanor, or infraction when the minor is a party;

(4)(O)(iv) protective orders and stalking injunctions; and

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

(4)(P) nonresident violator notice of noncompliance;

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

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

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

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

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

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

(4)(W) statement in support of petition to determine competency;

(4)(X) victim impact statements;

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

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

(4)(BB) records related to Court Commissioner Conduct Committee and Council actions under Rule 3-201.02, other than a public censure by the Council, and

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

(5) Protected Court Records. 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) strategy about collective bargaining or pending litigation;

(5)(Q) test questions and answers;

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

(5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal proceedings;

(5)(T) presentence investigation report;

(5)(U) except for those filed with the court, records maintained and prepared by juvenile probation; and

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

(6) Juvenile Court Social Records. 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) Juvenile Court Legal Records. 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) Safeguarded Court Records. The following court records are safeguarded:

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

(8)(B) upon request, location information, contact information and identity information, other than the 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) upon request, if the information has been safeguarded under paragraph (8)(A) or (8)(B), location information, contact information and identity information, other than the name of a party or the party's child, in a proceeding under Title 30, Husband and Wife.

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

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

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

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

(8)(~~EE~~)(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.

Effective: ~~November 21~~ April 25, 2023~~2~~

UTAH COURT RULES – PUBLISHED FOR COMMENT

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

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

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

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Posted: April 24, 2023

Utah Courts

Code of Judicial Administration – Comment Period Closed June 8, 2023

CJA04-0202.02. Records classification (AMEND). The proposed amendments update statutory references and include three substantive changes:

1. Classifies records related to Court Commissioner Conduct Committee and Council actions under CJA Rule 3-201.02 as “private,” except for public censures by the Judicial Council.
2. Safeguards contact information in domestic cases upon request, if the individual’s contact information has been safeguarded in a protective order or stalking injunction action under (8)(A) or in the cases listed under (8)(B).
3. In response to S.B. 93, classifies:
 - sex designation records for both minors and adults as “private;”
 - name change records for both minors and adults as “public,” and
 - records in cases involving both a name change and a sex designation change, for minors and adults, as “private” (with a few exceptions).

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

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This entry was posted in [-Code of Judicial Administration, CJA04-0202.02.](#)

« [Code of Judicial Administration – Comment Period Closed June 8, 2023](#)

[Rules of Evidence – Comment Period Closed June 5, 2023](#) »

UTAH COURTS

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One thought on “[Code of Judicial Administration – Comment Period Closed June 8, 2023](#)”

Peter Vanderhooft
April 24, 2023 at 7:19 pm

I am glad to see that sex designation cases are being designated as private. I spoke with a colleague about this last week and noticed that older cases had medical documents publicly available because the case was not automatically designated as private and counsel forgot to file a motion to classify to have the doctor’s letter designated as private. Since medical records and letters from doctors and therapists are a requirement in sex change cases, I believe this amendment will help individuals feel more secure that their private information is not available through a simple court record search.

- [-Rules of Appellate Procedure](#)
- [-Rules of Civil Procedure](#)
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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) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** ~~Otherwise, n~~No one may access a sealed court record except as authorized under (2)(A) and (2)(B) or by order of the court. A judge may review a sealed record when the circumstances warrant.

(2)(A) Adoption decree. An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.

(2)(B) Expunged records.

(2)(B)(i) The following may obtain certified copies of the expungement order and the case history upon request and in-person presentation of positive identification:

(2)(B)(i)(a) theA petitioner ~~in an expunged case or an individual who receives an automatic expungement under Utah Code Chapter 40a or Section 77-27-5.1;-~~

(2)(B)(i)(b) a law enforcement officer involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case; and

(2)(B)(i)(c) parties to a civil action arising out of the expunged incident, if the information is kept confidential and utilized only in the action.

(2)(B)(ii) Information contained in expunged records may be accessed by qualifying individuals and agencies under Utah Code Section 77-40a-403 upon written request and approval by the state court administrator in accordance with Rule 4-202.05. Requests must include documentation proving that the requester meets the conditions for access and a statement that the requester will comply with all confidentiality requirements in Rule 4-202.05 and Utah Code.

(3) **Private Court Records.** 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, attorney for a party, or licensed paralegal practitioner 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 or licensed paralegal practitioner 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 or licensed paralegal practitioner;

(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) Protected Court Records. 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 or licensed paralegal practitioner 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, attorney for a party, or licensed paralegal practitioner 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) Juvenile Court Social Records. The following may access a juvenile court social record:

- (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) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and
- (5)(M) anyone by court order.
- (5)(N) 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)(N)(i) the subject of the record, if age 18 or over;
- (5)(N)(ii) an attorney or person with power of attorney for the subject of the record;
- (5)(N)(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)(N)(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)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;
- (5)(N)(vi) anyone by court order.

(5)(O) 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) **Juvenile Court Legal Records.** 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) public or private individuals or agencies providing services to the subject of the record or to the subject's family;

(6)(E) the victim of a delinquent act may access the disposition order entered against the minor; and

(6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.

(7) **Safeguarded Court Records.** 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 or licensed paralegal practitioner 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 or licensed paralegal practitioner;

(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;

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

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(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.

(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.

Effective: November 1, 2023~~2~~

Rule 4-202.05. Request to access an administrative record; research; request to classify an administrative record; request to create an index.

Intent:

To establish the process for accessing an administrative court record, aggregate records and court records for the purpose of research.

Applicability:

This rule applies to court records associated with the administration of the judiciary, aggregate records and indexes, and requests to access non-public records for the purpose of research.

Statement of the Rule:

(1) Writing. ~~A request to access a public court record shall be presented in writing to the custodian of the record unless the custodian waives the requirement. A request to access a non-public court record to which a person is authorized access shall be presented in writing to the custodian of the record.~~ All requests under this rule must be presented in writing to the custodian of the record, unless the custodian waives the requirement. ~~written.~~ Requests shall contain the requester's name, email address, mailing address, daytime telephone number and a description of the record requested. If the record is a non-public record, the person making the request shall present identification.

(2) Private or protected records.

(2)(A) A request to access a private or protected court record, including aggregate records, to which the person is not authorized access shall be presented ~~in writing~~ to the state court administrator. The request shall ~~contain the requester's name, mailing address, daytime telephone number, a description of the record and~~ include a statement of facts, authority and argument in support of the request. If the state court administrator allows access, the state court administrator may impose any reasonable conditions to protect the interests favoring closure. The person making the request shall sign an agreement to be bound by the conditions.

(2)(B) Before allowing access to a private or protected record to someone not authorized access, the state court administrator shall mail-send notice of the request for access to any person whose interests are protected by closure and allow 10 business days for that person to submit a statement of facts, authority and argument in support of closure.

(2)(C) Research.

(2)(C)(i) The state court administrator may disclose non-public court records, including records associated with a case, ~~other than sealed records~~, for research purposes without the notice required in this rule if the state court administrator decides that the research is bona fide and cannot reasonably be completed without disclosure of the records, and the interests favoring the research are greater than or equal to the interests favoring closure. The state court administrator may not disclose sealed records unless the requester is authorized access under Rule 4-202.03.

(2)(C)(ii) If the state court administrator discloses non-public court records or a combination of public and non-public records ("records") for research purposes, the researcher shall sign a written statement acknowledging that violating the agreement may be grounds for criminal prosecution under Utah Code Section

63G-2-801. The agreement may include any reasonable condition to protect the interests favoring closure, including an agreement to:

(2)(C)(ii)(a) maintain the integrity, confidentiality and security of the records;

(2)(C)(ii)(b) return or destroy records from which a person can be identified as soon as the research has been completed;

(2)(C)(ii)(c) not include any individual's name or identifying information in any product of the research;

(2)(C)(ii)(d) where applicable, include a disclosure in any product resulting from the research that expunged records were used for research purposes;

(2)(C)(ii)(~~ee~~) not disclose the record, except for the purpose of auditing or evaluating the research and the auditor or evaluator agrees not to disclose the record;

(2)(C)(ii)(~~fd~~) use the record only for the described research;

(2)(C)(ii)(~~ge~~) indemnify the courts for any damages awarded as a result of injury caused by the research; and

(2)(C)(ii)(~~hf~~) if the research involves human subjects, comply with state and federal laws regulating research involving human subjects.

(2)(C)(iii) A request to access a court record under this rule is also governed by Rule 4-202.06 and Rule 4-202.07.

(3) **Requests to classify a record.** A request to classify a court record as private or protected shall be presented ~~in-writing~~ to the state court administrator. The request shall ~~contain-include~~ the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator may deny access to the record until the determination is entered.

(4) **Factors.** In deciding whether to allow access to a court record or whether to classify a court record as private or protected, the decision maker may consider any relevant factor, interest or policy presented by the parties, including but not limited to the interests described in Rule 4-202.

(5) **Index.** A request to identify a data element as an index shall be presented ~~in-writing~~ to the state court administrator. The request shall ~~contain-include~~ the relief sought and a statement of facts, authority and argument in support of the request. The state court administrator shall present the request to the Management Committee, which shall consider the request in the same manner as provided for appeals in Rule 4-202.07.

Effective: ~~November~~April 1, 2023~~13~~

Rule 4-404. Jury selection and service.**Intent:**

To identify the source lists from which the master jury list is built.

To establish a uniform procedure for jury selection, qualification, and service.

To establish administrative responsibility for jury selection.

To ensure that jurors are well informed of the purpose and nature of the obligations of their service at each stage of the proceedings.

Applicability:

This rule shall apply to all trial courts.

Statement of the Rule:**(1) Master jury list and jury source lists; periodic review.**

(1)(A) The state court administrator shall maintain for each county a master jury list as defined by the Utah Code.

(1)(B) The master jury list for each county shall be a compilation of the following source lists:

(1)(B)(i) driver licenses and identification cards for citizens of the United States 18 years of age and older from the Drivers License Division of the Department of Public Safety; and

(1)(B)(ii) the official register of voters from the Elections Division of the Office of the Lt. Governor.

(1)(C) The Judicial Council may use additional source lists to improve the inclusiveness of the master jury list for a county.

(1)(D) At least twice per year the state court administrator shall obtain from the person responsible for maintaining each source list a new edition of the list reflecting any additions, deletions, and amendments to the list. The state court administrator shall renew the master jury list for each county by incorporating the new or changed information.

(1)(E) The master jury list shall contain the name, address, and date of birth for each person listed and any other identifying or demographic information deemed necessary by the state court administrator. The state court administrator shall maintain the master list on a data base accessible to the district courts and justice courts of the state.

(1)(F) The state court administrator shall compare the number of persons on each master jury list for a county with the population of the county 18 years of age and older as reported by the Economic and Demographic Data Projections published for the year by the Office of Planning and Budget. The state court administrator shall report the comparison to the Judicial Council at its October meeting during even numbered years. The sole purpose of this report is to improve, if necessary, the inclusiveness of the master jury list.

(2) Term of service and term of availability of jurors.

(2)(A) The following shall constitute satisfactory completion of a term of service of a juror:

(2)(A)(i) serving on a jury panel for one trial whether as a primary or alternate juror regardless of whether the jury is called upon to deliberate or return a verdict;

(2)(A)(ii) reporting once to the courthouse for potential service as a juror;

(2)(A)(iii) except for a juror living in a county of the fourth, fifth, or sixth class or a county of the third class with populations up to 75,000, complying with a summons as directed, even if not directed to report to the courthouse; or

(2)(A)(iii) expiration of the term of availability.

(2)(B) The term of availability of jurors shall be as follows, unless a shorter term is ordered by the court:

(2)(B)(i) one month for the trial courts of record in Salt Lake county;

(2)(B)(ii) three months for the trial courts of record in Davis, Utah, and Weber counties; and

(2)(B)(iii) six months for all other courts.

(3) Random selection procedures.

(3)(A) Random selection procedures shall be used in selecting persons from the master jury list for the qualified jury list.

(3)(B) Courts may depart from the principle of random selection in order to excuse or postpone a juror in accordance with statute or these rules and to remove jurors challenged for cause or peremptorily.

(4) Qualified jury list.

(4)(A) For each term of availability as defined above, the state court administrator shall provide, based on a random selection, to the court the number of jurors requested by that court. This shall be the list from which the court qualifies prospective jurors. The names of prospective jurors shall be delivered to the requesting court in the random order in which they were selected from the master jury list. The court shall maintain that random order through summons, assignment to panels, selection for voir dire, peremptory challenges, and final call to serve as a juror; or the court may rerandomize the names of jurors at any step.

(4)(B) For each term of availability the court should request no more than the number of prospective jurors reasonably calculated to permit the selection of a full jury panel with alternates if applicable for each trial scheduled or likely to be scheduled during the term. The number of prospective jurors requested should be based upon the size of the panel plus any alternates plus the total number of peremptory challenges plus the anticipated number of prospective jurors to be postponed, excused from service or removed for cause less the number of jurors postponed to that term.

(4)(C) The clerk of the court shall sendmail to each prospective juror a qualification form. The prospective juror shall file the answers to the questions with the clerk within ten days after it is received. The state court administrator shall develop a uniform form for

use by all courts. In addition to the information required by statute, the qualification form shall contain information regarding the length of service, and procedures and grounds for requesting an excuse or postponement.

(4)(D) If a prospective juror is unable to complete the answers, they may be completed by another person. The person completing the answers shall indicate that fact.

(4)(E) If the clerk determines that there is an omission, ambiguity, or error in the answers, the clerk shall return the form to the prospective juror with instructions to make the necessary addition, clarification, or correction and to file the answers with the clerk within ten days after it is received.

(4)(F) The clerk shall review all answers and record the prospective juror as qualified or disqualified as defined by statute.

(4)(G) The clerk shall notify the state court administrator of any determination that a prospective juror is not qualified to serve as a juror, and the state court administrator shall accordingly update the master jury list.

(4)(H) A prospective juror whose qualification form is returned by the email provider as "undeliverable" shall have a qualification form mailed to them. A prospective juror whose qualification form is returned by the United States Postal Service as "undeliverable," or "moved - left no forwarding address," or "addressee unknown," or other similar statement, shall not be pursued further by the clerk. The clerk shall notify the state court administrator who shall accordingly update the master jury list.

(4)(I) If a prospective juror fails to respond to the qualification questionnaire and the form is not returned by the U.S. Postal Service as undeliverable, the clerk shall mail the qualification form a second time with a notice that failure to answer the questions may result in a court order requiring the prospective juror to appear in person before the clerk to complete the qualification form. If a prospective juror fails to answer the questions after the second mailing, the qualification form and a summons may be delivered to the sheriff for personal service upon the prospective juror. The summons shall require the prospective juror to answer the questions and file them with the court within ten days or to appear before the clerk to prepare the form. Any prospective juror who fails to answer the questions or to appear as ordered shall be subject to the sanctions set forth in the Utah Code.

(5) Excuse or postponement from service.

(5)(A) No competent juror is exempt from service.

(5)(B) Persons on the qualified juror list may be excused from jury service, either before or after summons, for undue hardship, public necessity or because the person is incapable of jury service under the Utah Code. The court shall make reasonable accommodations for any prospective juror with a disability. Excuse from jury service satisfies the prospective juror's statutory service obligation.

(5)(C) A prospective juror may be postponed to later in the term or to a future term for good cause.

(5)(D) Without more, being enrolled as a full or part-time post-high school student is not sufficient grounds for excuse from service.

(5)(E) Disposition of a request for excuse from service or postponement may be made by the judge presiding at the trial to which panel the prospective juror is assigned, the presiding judge of the court, or the judge designated by the presiding judge for that purpose. The presiding judge may establish written standards by which the clerk may dispose of requests for excuse from service or postponement.

(6) Summons from the qualified jury list.

(6)(A) After consultation with the judges or the presiding judge of the court, the clerk shall determine the number of jurors needed for a particular day. The number of prospective jurors summoned should be based upon the number of panels, size of the panels, any alternates, the total number of peremptory challenges plus the anticipated number of prospective jurors to be postponed, excused from service or removed for cause. The clerk shall summon the smallest number of prospective jurors reasonably necessary to select a trial jury.

(6)(B) The judge may direct that additional jurors be summoned if, because of the notoriety of the case or other exceptional circumstances, the judge anticipates numerous challenges for cause.

(6)(C) Juror summons.

(6)(C)(i) The summons may be served by first class mail or email delivered to the address provided on the juror qualification form or by telephone.

(6)(C)(ii) ~~Mailed s~~The summonses shall be on a form approved by the state court administrator. The summons may direct the prospective juror to appear at a date, time, and place certain or may direct the prospective juror to telephone the court for further information. The summons shall direct the prospective juror to present the summons for payment. The summons may contain other information determined to be useful to a prospective juror.

(6)(C)(iii) If summons is made by telephone, the clerk shall follow the procedures of paragraph (9) of this rule.

(7) Assignment of qualified prospective jurors to panels. Qualified jurors may be assigned to panels in the random order in which they appear on the qualified jury list or may be selected in any other random order. If a prospective juror is removed from one panel, that prospective juror may be reassigned to another panel if the need exists and if there are no prospective jurors remaining unassigned.

(8) Selection of prospective jurors for voir dire. Qualified jurors may be selected for voir dire in the random order in which they appear on the qualified jury list, or may be selected in any other random order.

(9) Calling additional jurors. If there is an insufficient number of prospective jurors to fill all jury panels, the judge shall direct the clerk to summon from the qualified jury list such additional jurors as necessary. The clerk shall make every reasonable effort to contact the prospective jurors in the order listed on the qualified jury list. If after reasonable efforts the clerk fails to contact a juror, the clerk shall attempt to contact the next juror on the list. If the clerk is unable to obtain a sufficient number of jurors in a reasonable period of time, the court may use any lawful method for acquiring a jury.

Effective: November 1, 20~~23~~¹⁶

TAB 3

CJA 6-301. Authority of court commissioner as magistrate

Notes: At the June 26th Judicial Council meeting, the 3rd district court submitted a budget request to hire “criminal commissioners.” The Council approved the budget request and asked for an amendment to rule 6-301 to broaden commissioners’ magistrate authority. Relevant statutes and rules are attached. At this point, I am seeking direction from the committee on how broad that authority should be and requesting permission to ask for feedback from the Advisory Committee on the Rules of Criminal Procedure (URCrP). Below are rules identified by the URCrP committee’s staff attorney that he believes the committee may want to review/consider:

Rule 6. Warrant of arrest or summons (delegating authority to commissioners to calendar initial appearances and issue summons; authorizing commissioners to issue arrest warrants, which should be reviewed; authorizing commissioners to set pretrial release conditions, which should be reviewed; determining whether commissioners should play a role in reviewing unexecuted warrants for recall)

Rule 7. Initial proceedings for class A misdemeanors and felonies (delegating authority to commissioners to conduct initial appearances; authorizing commissioners to set pretrial status orders and conduct evidentiary hearings on the subject, which should be reviewed)

Rule 8. Appointment of counsel (incorporating, with other URCrP rules, the authority for commissioners to evaluate affidavits of indigency, make determinations of indigency, and appoint counsel, as permitted, which should be reviewed)

Rule 9A. Procedures for persons arrested pursuant to a warrant (delegating authority to commissioners to hold hearings for defendants arrested pursuant to arrest warrants within 72 hours of arrest, and to make determinations based on those hearings regarding pretrial status orders, which should be reviewed)

Rule 29. Disability and disqualification of a judge or change of venue (permitting a party to move for the disqualification of a court commissioner or for the reassignment of a court commissioner upon disability)

Rule 40. Search warrants (authorizing commissioners to review affidavits and issue search warrants, which should be reviewed)

Criminal Commissioners

78A-2-220. Authority of magistrate.

(1) Except as otherwise provided by law, a magistrate as defined in Section 77-1-3 shall have the authority to:

- (a) commit a person to incarceration prior to trial;
- (b) set or deny bail under Section 77-20-205 and release upon the payment of monetary bail, as defined in Section 77-20-102, and satisfaction of any other conditions of release;
- (c) issue to any place in the state summonses and warrants of search and arrest and authorize administrative traffic checkpoints under Section 77-23-104;
- (d) conduct an initial appearance;
- (e) conduct arraignments;
- (f) conduct a preliminary examination to determine probable cause;
- (g) appoint attorneys and order recoupment of attorney fees;
- (h) order the preparation of presentence investigations and reports;
- (i) issue temporary orders as provided by rule of the Judicial Council; and
- (j) perform any other act or function authorized by statute.

(2) A **judge of the justice court** may exercise the authority of a magistrate specified in Subsection (1) with the following limitations:

- (a) a judge of the justice court may conduct an initial appearance, preliminary examination, or arraignment as provided by rule of the Judicial Council; and
- (b) a judge of the justice court may not perform any act or function in a capital felony case.

77-1-3. Definitions.

(4) "**Magistrate**" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section 78A-5-107, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

78A-5-107. Court commissioners -- Qualifications -- Appointment -- Functions governed by rule.

(1)(a) Court commissioners are quasi-judicial officers of courts of record and have limited judicial authority as provided by this section and rules of the Judicial Council.

- (b) Court commissioners serve full-time and are subject to the restrictions of Section 78A-2-221, which prohibits the practice of law.

(2)(a) The Judicial Council shall appoint court commissioners with the concurrence of a majority of the judges of trial courts in the district the court commissioner primarily serves.

(b) The Judicial Council may assign court commissioners appointed under this section to serve in one or more judicial districts.

(3) A person appointed as a court commissioner shall have the following qualifications:

- (a) be 25 years old or older;
- (b) be a citizen of the United States;
- (c) be a resident of this state while serving as court commissioner;
- (d) be admitted to the practice of law in this state; and
- (e) possess ability and experience in the areas of law in which the commissioner will be serving.

(4) A court commissioner shall take and subscribe to the oath of office as required by Article IV, Sec. 10, Utah Constitution, prior to assuming the duties of the office.

(5) Court commissioners shall:

- (a) comply with applicable constitutional and statutory provisions, court rules and procedures, and rules of the Judicial Council;
- (b) comply with the Code of Judicial Conduct to the same extent as full-time judges; and
- (c) successfully complete orientation and education programs as required by the Judicial Council.

(6) The presiding judge of the district the commissioner primarily serves:

- (a) shall develop a performance plan for the court commissioner and annually conduct an evaluation of the commissioner's performance, and shall provide the plan and evaluations to the Judicial Council upon request; and
- (b) is responsible for the day-to-day supervision of the court commissioner.

(7) The Judicial Council shall:

- (a) establish by rule procedures for the investigation and review of complaints and the discipline and removal of court commissioners; and
- (b) evaluate court commissioners under the requirements of Subsection 78A-2-104(6).

(8) The Judicial Council shall make uniform statewide rules defining the duties and authority of court commissioners for each level of court they serve. The rules shall not exceed constitutional limitations upon the delegation of judicial authority. The rules shall at a minimum establish:

- (a) types of cases and matters commissioners may hear;
- (b) types of orders commissioners may recommend;
- (c) types of relief commissioners may recommend; and
- (d) procedure for timely judicial review of recommendations and orders made by court commissioners.

Rule 6-301. Authority of court commissioner as magistrate.

Effective: 5/12/2020

Intent:

To provide for the authority of a court commissioner to act as a magistrate as required by § 77-1-3.

Applicability:

This rule shall apply to court commissioners.

Statement of the Rule:

A court commissioner may exercise the following authority conferred upon magistrates by the Legislature:

- (1) issue warrants and summonses in traffic cases; and
 - (2) set fines in traffic cases.
-

Rule 6-401. Domestic relations commissioners.

Effective: 5/14/2013

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.

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

Effective: 11/1/2013

Intent:

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

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 101. Motion practice before court commissioners.

Effective: 5/1/2021

(a) Written motion required. An application to a court commissioner for an order must be by motion which, unless made during a hearing, must be made in accordance with this rule.

(1) A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought. Any evidence necessary to support the moving party's position must be presented by way of one or more affidavits or declarations or other admissible evidence. The motion may also include a supporting memorandum.

(2) All motions must provide the bilingual Notice to Responding Party approved by the Judicial Council.

(3) Each motion to a court commissioner must include the following caution language at the top right corner of the first page, in bold type: **This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the Court might make a decision against you without your input. In addition, you may file a written response at least 14 days before the hearing.**

(4) Failure to provide the bilingual Notice to Responding Party or to include the caution language may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside any resulting order or judgment.

(b) Time to file and serve. The moving party must file the motion and any supporting papers with the clerk of the court and obtain a hearing date and time. The moving party must serve the responding party with the motion and supporting papers, together with notice of the hearing at least 28 days before the hearing. If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.

(c) Response. Any other party may file a response, consisting of any responsive memorandum, affidavit(s) or declaration(s). The response must be filed and served on the moving party at least 14 days before the hearing.

(d) Reply. The moving party may file a reply, consisting of any reply memorandum, affidavit(s) or declaration(s). The reply must be filed and served on the responding party at least 7 days before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

(e) Counter motion. Responding to a motion is not sufficient to grant relief to the responding party. A responding party may request affirmative relief by way of a counter motion. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the response. Any response to the counter motion must be filed and served no later than the reply to the motion. Any reply to the response to the counter motion must be filed and served at least 3 business days before the hearing. The reply must be served in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is not required.

(f) Necessary documentation. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by verified financial declarations with

documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

(g) No other papers. No moving or responding papers other than those specified in this rule are permitted.

(h) Exhibits; objection to failure to attach.

(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns, bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or photographs must be supplied to the court as exhibits to one or more affidavits (as appropriate) establishing the necessary foundational requirements. Copies of court papers such as decrees, orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as exhibits. Court papers from cases other than that before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

(2) If papers or exhibits referred to in a motion or necessary to support the moving party's position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If papers or exhibits referred to in the response or necessary to support the responding party's position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect must be cured within 2 business days after notice of the defect or at least 3 business days before the hearing, whichever is earlier.

(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as exhibits, but the contents of such documents may be presented in the form of a summary, chart or calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous documents must be supplied to the other parties at the time of the filing of the summary, chart or calculation. The originals or duplicates of the documents must be available at the hearing for examination by the parties and the commissioner. Collections of documents, such as bank statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries that collectively exceed ten pages in length must be presented in summary form. Individual documents with specific legal significance, such as tax returns, appraisals, financial statements and reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must be submitted in their entirety.

(i) Length. Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including affidavits, attachments and summaries, but excluding financial declarations and income verification. The court commissioner may permit the party to file an over-length memorandum upon ex parte application and showing of good cause.

(j) Late filings; sanctions. If a party files or serves papers beyond the time required in this rule, the court commissioner may hold or continue the hearing, reject the papers, impose costs and attorney fees caused by the failure and by the continuance, and impose other sanctions as appropriate.

(k) Limit on order to show cause. An application to the court for an order to show cause may be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by affidavit or

other evidence sufficient to show cause to believe a party has violated a court order.

(l) Hearings.

(1) The court commissioner may not hold a hearing on a motion for temporary orders before the deadline for an appearance by the respondent under Rule 12.

(2) Unless the court commissioner specifically requires otherwise, when the statement of a person is set forth in an affidavit, declaration or other document accepted by the commissioner, that person need not be present at the hearing. The statements of any person not set forth in an affidavit, declaration or other acceptable document may not be presented by proffer unless the person is present at the hearing and the commissioner finds that fairness requires its admission.

(m) Motions to judge. The following motions must be to the judge to whom the case is assigned: motion for alternative service; motion to waive 30-day waiting period; motion to waive divorce education class; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine. A court may provide that other motions be considered by the judge.

(n) Objection to court commissioner's recommendation. A recommendation of a court commissioner is the order of the court until modified by the court. A party may object to the recommendation by filing an objection under Rule 108.

Rule 108. Objection to court commissioner's recommendation.

(a) A recommendation of a court commissioner is the order of the court until modified by the court. A party may file a written objection to the recommendation within 14 days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, within 14 days after the minute entry of the recommendation is served. A judge's counter-signature on the commissioner's recommendation does not affect the review of an objection.

(b) The objection must identify succinctly and with particularity the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made and state the relief sought. The memorandum in support of the objection must explain succinctly and with particularity why the findings, conclusions, or recommendation are incorrect. The time for filing, length and content of memoranda, affidavits, and request to submit for decision are as stated for motions in Rule 7.

(c) If there has been a substantial change of circumstances since the commissioner's recommendation, the judge may, in the interests of judicial economy, consider new evidence. Otherwise, any evidence, whether by proffer, testimony or exhibit, not presented to the commissioner shall not be presented to the judge.

(d)(1) The judge may hold a hearing on any objection.

(d)(2) If the hearing before the commissioner was held under Utah Code Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, Utah Code Title 78B, Chapter 7, Protective Orders, or on an order to show cause for the enforcement of a judgment, any party has the right, upon request, to present testimony and other evidence on genuine issues of material fact.

(d)(3) If the hearing before the commissioner was in a domestic relations matter other than a cohabitant abuse protective order, any party has the right, upon request:

(d)(3)(A) to present testimony and other evidence on genuine issues of material fact relevant to custody; and

(d)(3)(B) to a hearing at which the judge may require testimony or proffers of testimony on genuine issues of material fact relevant to issues other than custody.

(e) If a party does not request a hearing, the judge may hold a hearing or review the record of evidence, whether by proffer, testimony or exhibit, before the commissioner.

(f) The judge will make independent findings of fact and conclusions of law based on the evidence, whether by proffer, testimony or exhibit, presented to the judge, or, if there was no hearing before the judge, based on the evidence presented to the commissioner.
